

## **BYLAWS**

### **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT BOARD OF ZONING ADJUSTMENT**

#### **ARTICLE I**

##### **Name**

The name of this Board shall be the Louisville/Jefferson County Metro Government Board of Zoning Adjustment (“Board”), Metro Code of Ordinances, Section 32.850.

#### **ARTICLE II**

##### **Purpose**

The purpose of the Board shall be to direct the economic growth and physical development of Louisville Metro and the communities therein and to guide such development in such a manner as to assure the prosperity, health, safety, morals and general welfare of the county and its communities; provided, however, under KRS 100.217 there may be other Boards with jurisdiction of a particular city or area within the County.

#### **ARTICLE III**

##### **Functions**

The functions and duties of the Board shall include, but not be limited to, the following:

- A. Manages and conducts the business, activities, and affairs of the Board as prescribed by KRS – Chapter 100 and subsequent amendments and local ordinances and resolutions.
- B. Plans and regulates without favor or prejudice to any individual, group, class, race, or creed.
- C. Approves all policies, procedures, and regulations necessary for the management of the affairs of the Board.
- D. Conducts public hearings as prescribed in the adopted policies.
- E. Keeps minutes and records of all proceedings, including regulations, transactions, findings, and determinations, and the number of votes for and against each question, and if any member is absent or disqualified from voting, indicating the fact.
- F. Delegates to committees and/or staff designees such authority that is deemed advisable, and in accordance with statutes and regulations.
- G. Provides continuing liaison informational services insuring communication of planning progress to the general public and the appropriate agencies and organizations.

**ARTICLE IV**  
**Office**

The office of the Board of Zoning Adjustment shall be located at the Office of Planning and Design Services. The Board may delegate duties or functions to staff members as needed to carry out its assigned duties.

**ARTICLE V**  
**Members**

Section 1. Composition. The Board of Zoning Adjustment shall be composed of seven members as prescribed in KRS 100.217(2), Metro Code of Ordinances, Section 32.850:

- A. The Mayor shall appoint members to the Board and the Metro Council shall approve all appointments.
- B. No more than two (2) Members of the Board shall be citizen members of the Planning Commission.
- C. Members shall not hold any office incompatible with that of Board member, as set forth in KRS 61.080.

Section 2. Term of Office

Members shall serve three-year terms, except those first appointed to the Board shall serve the following staggered terms:

- A. Two (2) members shall serve one (1) year;
- B. Two (2) members shall serve two (2) years; and
- C. Three (3) members shall serve three (3) years.

Section 3. Vacancies. Vacancies shall be filled within sixty (60) days by the appropriate appointing authority (Mayor, with Council approval). If the authority fails to act within that time, the Planning Commission shall fill the vacancy. When a vacancy occurs other than through expiration of the term of office, it shall be filled for the remainder of that term. (KRS 100.217(5)).

Section 4. Compensation. Reimbursement for expenses or compensation or both may be authorized (but is not mandatory) for Board members.

Section 5. Orientation and Continuing Education

- A. Each Board member is required by KRS 147A.027 to obtain the following:

1. A minimum of four (4) hours of orientation training within one (1) year prior to appointment or within one hundred twenty (120) days of appointment.
  2. A minimum of eight (8) hours of continuing education within each period of two (2) consecutive calendar years, starting at the date of the individual's appointment.
- B. Appropriate subjects for education include but are not limited to: land use planning; zoning; floodplains; transportation; community facilities; ethics; public utilities; wireless telecommunications facilities; parliamentary procedure; public hearing procedures; administrative law; economic development; housing; public buildings; building construction; land subdivision; and powers and duties of the board of adjustment.
- C. Certification of training is required. A written statement shall be filed with the planning commission secretary by December 31 of each calendar year identifying the date, subject matter, location, sponsor, and time spent in each program.
- D. Failure to complete the education requirement or certification of educational activities shall subject the member to removal according to the provisions of KRS 100.217(8).

Section 6. Removal of Members. Any member of the Board may be removed by the appropriate appointing authority for inefficiency, neglect of duty, malfeasance, or conflict of interest. Any appointing authority who exercises the power to remove a member shall submit a written statement to the Board setting forth the reasons for removal, and the statement shall be read at the next meeting of the Board of Zoning Adjustment, which shall be open to the general public. The member so removed shall have the rights of appeal in the circuit court. (KRS 100.217(8)).

Section 7. Ethics. Members are subject to the Metro Ethics Ordinance set out in Metro Code of Ordinances, Section 21.01 – 21.10.

## **ARTICLE VI Officers**

Section 1. Elected Officers. The elective officers shall be a Chairperson, a Vice-Chairperson, a Secretary, and any other officers it deems necessary.

Section 2. Nomination and Elections

- A. Nominations. Nominations for officers shall be made from the floor at the annual meeting.

- B. Election. The officers shall be elected annually by a majority vote of all members present at the annual meeting and shall assume office at the close of the annual meeting.

Section 3. Term of Office. Officers shall be elected for a term of one year or until their successors are elected and assume office. Any officer shall be eligible for re-election at the expiration of his/her term.

Section 4. Vacancy in Office. A vacancy in the office of Chairperson shall be filled by the Vice- Chairperson. The vacancy created in the Offices of Vice- Chairperson or Secretary shall be filled at a special meeting, or at the next regular meeting following notification that a vacancy exists. Nominations shall be from the floor and the election shall be by majority votes of those members present.

Section 5. Duties of Officers

A. The Chairperson shall:

1. Preside at meetings of the Board;
2. Provide general supervision of the conduct of the affairs of the Board and assigned staff members;
3. Advise the Director of Planning and Design Services as to member concerns;
4. Appoint any committees and committee chairs;
5. Review and sign the approved minutes of all Board meetings and public hearings.
6. Perform such other duties as determined by the Board, the bylaws, and policies adopted by the Board.

B. The Vice-Chairperson shall:

1. In the absence of the Chairperson, or in the event of the temporary inability of the Chairperson to act, perform the duties of the Chairperson;
2. Succeed to the Office of Chairperson for the unexpired term, in the event of a vacancy in that office;
3. Assume such other duties as may be assigned to the office by the Board.

- C. The Secretary shall:
1. Attend all regular and special meetings and hearings, as well as any committee meetings, and keep a record of same, which shall be transcribed in the minute book of the Board;
  2. Send notices of all meetings of the Board required to be sent by law, under these bylaws, or as directed by the Chairperson;
  3. Have charge of all books, papers and records of the Board, and shall attend to all correspondence of the Board;
  4. Review and sign the approved minutes of all Board meetings and hearings.

The Secretary's clerical functions may be delegated to a member of the staff, upon resolution of the Board.

Section 6. Temporary Assumption of Duties.

- A. In the event that both the Chairperson and Vice-Chairperson of the Board shall be absent or unable for any reason to attend to the duties of their offices, the members of the Board may at any regular or special meeting appoint a Chairperson Pro Tem who shall attend to all the duties of such officer until such officer shall return, or be able to attend to his/her duties.
- B. If the Board Secretary is elected as Chairperson Pro Tem, his/her functions as Secretary must be delegated to a staff member, if this has not already occurred.

**ARTICLE VII  
Meetings**

Section 1. Regular, Annual, and Special Meetings.

- A. Regular. Regular meetings of the Board of Zoning Adjustment shall be held at 1:00 p.m. on the first and third Monday of each month beginning in 2018 at a place designated by the Board at its Annual Meeting, except when ordered otherwise by the Director of Planning and Design Services.
- B. Annual. The annual meeting shall be held immediately preceding the regular meeting held on the first Monday in February of the calendar year, and shall be for the purpose of electing officers, receiving annual reports of officers, committees, and the Director of Planning and Design Services, and transacting such other business as may arise.

- C. Special. Special meetings shall be held at the call of the Chairperson. All members shall be notified of such special meetings by written or oral notice at least seven days prior to the meeting. The notice shall specify the date, time, place and the business to be considered. (KRS 100.221(1))

Section 2. Quorum. Four members of the Board of Zoning Adjustment shall constitute a quorum. The lack of a quorum shall not prevent a scheduled public hearing.

Section 3. Voting. A majority of all members present where a quorum of the Board is present shall be necessary to transact any official business, except a majority vote of the total Board membership is required to adopt or amend bylaws. In the event there is a tie vote on any motion pending before the Board of Zoning Adjustment, the Chairman may call for either (a) a new motion to re-consider the matter, followed by a re-vote, or (b) a motion to continue the case to a future meeting where additional Board members could be present, having reviewed the record, and additional testimony may be taken. If the case is continued and, at that second meeting, there is another tie vote, then the Chairman may either (a) call for a new motion to re-consider the matter, followed by a re-vote, or (b) recognize the tie vote, in which case the appeal or application under consideration is deemed rejected.

Section 4. Records. The Board shall keep minutes and records of all proceedings, including resolutions, transactions, findings and determinations; shall record the number of votes for and against each question presented; and shall indicate whether any member is absent or abstains from voting. All such records shall be filed in the office of the Board immediately following the meeting at which they occurred. All records of the Board are open records as required by the Kentucky Revised Statutes.

Section 5. Conflict of Interest. Any member of the Board of Zoning Adjustment who has a conflict of interest, including any direct or indirect financial interest in the outcome of any questions before the Board, or any interest that affects his/her impartiality of judgment in the matter, shall disclose the nature of the interest in writing to staff legal counsel prior to the hearing. The member also shall disqualify himself/herself from voting on the question, shall leave chambers until the matter has been resolved, and he or she shall not be counted for the purposes of a quorum. (See also KRS 100.221(2)).

Section 6. Absences. The third consecutive absence of a member from a meeting of the Board shall be made known to the officer who appointed, or has the power to appoint, such member (Mayor). Such continued absence without reason acceptable to the Board shall be considered prima facie evidence that such member has neglected his/her duties as a member of the Board, and the appointing officer (Mayor) shall notify the member to that effect, and may request the resignation of said member.

Section 7. Open Meetings and Public Hearings. Board of Zoning Adjustment meetings and public hearings shall be open to the public as required by the Kentucky Revised Statutes.

Section 8. New Evidence at Board Hearings. Copies of photographs, writings or recordings used by a party at a public hearing before the Board which are not then in the Board's records including but without limitation phone pictures, newspaper or magazine articles, surveys, plats, maps or tape recordings shall be filed with the Board within seven (7) days after the hearing. If the copies are not filed in that period such evidence and any related testimony shall be stricken from the record of the case.

Section 9. Remote or Virtual Attendance

- A. Definition. Remote or virtual attendance means the attendance of meetings from a location away from the physical meeting site, using an electronic device to be visible and audible to the Board
- B. If and when technology permits, the Board may allow remote or virtual attendance of its meetings with the following requirements:
  - 1. Board members and staff must be in attendance, in person, at the physical location.
  - 2. Remote attendees must be visible and audible to the Board members synchronous with the live meeting.
  - 3. If technological issues arise during a meeting that is being conducted with an option for remote attendance, the meeting will only be paused or cancelled if the technology issues are occurring at the physical location. Technological difficulties experienced by a remote attendee will not be cause to delay the meeting, or cause to defer a docketed case.
  - 4. Virtual meetings shall be hosted on software approved by Planning & Design Services in consultation with the Metro IT department.
  - 5. At least one person representing the applicant of each case is highly encouraged to attend meetings in person at the physical location. If no representative is present at the physical location, the Board may elect to continue or table the case until a representative is available to attend in person.

Section 10. Special Meeting Considerations During State of Emergency

- A. The following shall apply during periods in which in-person public hearings and meetings are prohibited or discouraged by a State of Emergency declared either by the Office of the Governor of Kentucky or Office of the Mayor of Louisville Metro.
  - 1. During a State of Emergency in which in-person public hearings and meetings are prohibited or discouraged, the

Board may allow remote or virtual attendance from Board members, staff, applicants, and/or citizens. A physical, in-person, location must be provided with at least one staff member present.

2. During such a State of Emergency, The Board may allow attendance by phone whereby attendees are not visible. However, Board members must still be visible for certain actions as required by KRS.

## **ARTICLE VIII Committees**

Section 1. Membership. The Chairperson of the Board shall form and appoint any committees, and shall designate one member as chairperson thereof.

Section 2. Meetings.

- A. Committees shall meet at such times and places as designated by the chairperson of the committee.
- B. A majority of the members of a committee shall constitute a quorum.
- C. All reports of committees shall be made in writing, and the original copy thereof shall be filed and become part of the records of the Board.

Section 3. Ex-Officio Member. The Chairperson of the Board of Zoning Adjustment shall serve as an ex-officio member of all committees.

## **ARTICLE IX Parliamentary Authority**

Robert's Rules of Order, Modern Edition, most current revision, shall govern the proceedings of the Board of Zoning Adjustment in all cases to which they are applicable, and in which they are not inconsistent with these bylaws, Kentucky Revised Statutes, the Land Development Code, or other local laws.

## **ARTICLE X Amendments**

These Bylaws may be amended by a majority vote of the total membership of the Board of Zoning Adjustment at any regular or special meeting of the Board, provided that copies of the proposed amendment have been included in the notice of such meeting. At least seven days' prior notice shall be given.

Adopted July 7, 2003



Revised May 7, 2007  
Revised January 23, 2017  
Revised December 4, 2017  
Revised February 4, 2019  
Revised May 16, 2022  
REVISION DATE

**POLICIES**  
**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**  
**BOARD OF ZONING ADJUSTMENT**

BOARD OF ZONING ADJUSTMENT POLICIES.....1.00

1.01 Policies may be:

- 1.01.01 adopted by a majority vote of the entire Board.
- 1.01.02 amended or rescinded by a majority vote of the entire Board after previous notice of at least three business days has been given, in accordance with the Bylaws or these policies.
- 1.01.03 suspended temporarily by a majority vote of those present.

ADMINISTRATIVE POLICIES.....2.00

2.01 The Division of Planning and Design Services shall house all official books, papers and records of the Board and shall be responsible for all official correspondence relative to hearings, meetings, resolutions and decisions of the Board, if any such delegation of duties are not specifically set forth in the Bylaws.

APPLICATION PROCEDURES POLICIES.....3.00

3.01 Neighborhood Meetings

- 3.01.01 Neighborhood meetings for conditional use permit requests shall be held in accordance with the applicable section of the Land Development Code. Neighborhood meetings shall be held in-doors and near the property that is the subject of a conditional use permit application.
- 3.01.02 Neighborhood Meeting Scheduling Requirements:
  - (1) Neighborhood meetings shall not be held on national holidays. It is recommended that religious and other significant holidays be avoided.
  - (2) Neighborhood meetings shall not be held on the same night as regularly scheduled Metro Council meetings.
  - (3) Neighborhood meetings shall be held on weekdays (Friday evening is considered a weekend), starting no earlier than 6:00 p.m. and no later than 8:00 p.m.

- (4) The date of the meeting must be a minimum of 14 days after the Neighborhood Meeting Notice is sent out. *(NOTE: This includes the electronic notice emailed by Planning & Design Services staff.)*
- (5) Neighborhood meetings shall be held inside a building with enough space and seating capacity to accommodate those invited to the meeting.
- (6) Neighborhood meetings shall be held in Jefferson County, within reasonable proximity to the subject site. *(NOTE: Neighborhood meetings for Conditional Use Permits are required to be within one (1) mile of the subject site unless approved by the case manager.)*
- (7) A virtual neighborhood meeting may be required in addition to a regular neighborhood meeting as a means of providing an additional option for interested parties to participate. This meeting may be held concurrently with the regular neighborhood meeting or on a separate date and time. The applicant shall be required to meet the Security and Increased Feedback requirements for Virtual Neighborhood Meetings described below.

### 3.01.03 Neighborhood Meeting Letter Requirements

- (1) The neighborhood meeting notice letter shall contain the pre-application case number, the address/location of the subject property, the case manager's name and contact information (email address), the date, start time, and location of the neighborhood meeting, the name of the applicant, and the name of the meeting facilitator if different than the applicant.
- (2) In addition to the neighborhood meeting notice letter, a map of the location of the subject property shall be included with the neighborhood meeting letter.
- (3) If a CUP development plan is required, a copy of the draft development plan shall be included with the neighborhood meeting letter.
- (4) PDS staff shall approve the neighborhood meeting notice letter prior to mailing of the notice pursuant to the Land Development Code.

### 3.01.0304 Neighborhood Meeting Content Requirements

- (1) The applicant/meeting moderator shall maintain a sign-in sheet of the attendees. Anyone who signs the sign-in sheet who did not receive the neighborhood meeting notice shall be added to the official mailing label matrix for all future notices regarding the proposal. Also, any interested parties may

contact the applicant to register as an attendee and be included on the sign-in sheet and added to the official mailing label matrix for all future notices regarding the proposal.

(2) The applicant/meeting moderator shall provide an overview of the proposal.

(3) The applicant/meeting moderator shall have a thorough understanding of the proposal and be able to address any questions or concerns by those in attendance.

(4) The applicant shall distribute the *After the Neighborhood Meeting* flyer to all attendees.

3.01.~~04~~05 If sufficient evidence (as determined by the Planning Director) is submitted identifying a neighborhood meeting standard outlined in 3.01.02 and/or 3.01.03 was not complied with, the following consequences shall occur:

(1) If discovered prior to formal application filing, the formal application shall not be accepted until a neighborhood meeting is held in conformance with the standards outlined in 3.01.02 and/or 3.01.03.

(2) If discovered after formal filing of the application, the public hearing shall be postponed or continued until the neighborhood meeting is held in conformance with the standards outlined in 3.01.02 and/or 3.01.03.

(3) If discovered at the public hearing, the Board shall continue the meeting, and not schedule a public hearing date, until the neighborhood meeting is held in conformance with the standards outlined in 3.01.02 and/or 3.01.03.

3.01.~~05~~06 Virtual Neighborhood Meetings

(1) **Definition.** A virtual neighborhood meeting is a neighborhood meeting conducted via electronic audio and video equipment by an applicant which residents may 'attend' using home computers, laptops, cell phones, or other devices. A virtual neighborhood meeting must meet all regular requirements of an in-person neighborhood meeting except for the requirement of a physical meeting location and as otherwise modified by this section. (*NOTE: A physical meeting location may be provided by the applicant in addition to the virtual neighborhood meeting if conditions permit in-person meetings.*)

(2) Virtual neighborhood meetings may be conducted in lieu of regular neighborhood meetings, upon explicit permission of the Board of Zoning Adjustment during periods in which in-person neighborhood meetings are prohibited or discouraged by a State of Emergency declared either by the Office of the Governor of Kentucky or Office of the Mayor of Louisville Metro, during which applicants may conduct a virtual neighborhood meeting to satisfy the neighborhood meeting requirements of the Land Development Code. Each virtual neighborhood meeting must be pre-approved by the Planning Director. A written request to the Planning Director shall be provided by the applicant. The request shall detail methods of notification, proposed information and proposed virtual platform.

(3) **Security.** In order to protect would-be attendees of a virtual neighborhood meeting from malware and other electronic security risks, all virtual neighborhood meetings shall be hosted on platform approved by the Planning Director in consultation with Metro IT. Any platform in use by the Louisville Metro Government shall be considered acceptable.

(4) **Primary Enhanced Notice.** Methods of notices must be approved by the Planning Director. The Primary Enhanced Notice shall be required for virtual neighborhood meetings and sent to all required parties at least fourteen (14) days in advance of the scheduled meeting date. The Primary Enhanced Notice shall be approved by the Planning Director or their designee prior to being mailed and shall include, but not be limited to, the following:

(a) A detailed summary of the proposal, including but not limited to the following depending on relevancy with the proposal (May not be required for proposals with no physical changes to the site):

- Present and proposed zoning/form districts, land uses, patterns and lot counts
- Proposed building heights and setbacks
- Proposed landscaping, screening and buffering
- Sanitary sewer availability
- Stormwater management plans
- Road and access modifications

(b) A color copy of the proposed development plan with a minimum size of 8 1/2"x11" if required.

(c) A LOJIC map showing the location of the proposal

(d) Contact information for the applicant and associated professionals (attorneys, engineers, etc.), including but not limited to designating a person as a primary point of contact, a phone number and email address, for any questions or comments. Notice shall also include a physical address to which written comments may be mailed and incorporated into the meeting record. A resident who has received the notice by mail can request an in-person meeting, if conditions permit, due to lack of access to the technology needed to attend the virtual meeting.

(e) Case number (if there is one) and contact information, including but not limited to a phone number and email address, for Planning & Design Services case manager or supervisor.

(f) Information on how to obtain case information online from Louisville Metro Planning & Design's online customer service portal.

(g) The *After the Neighborhood Meeting* flier produced by Louisville Metro Planning & Design.

(5) **Increased feedback.** Applicants who choose to host virtual neighborhood meetings shall:

(a) Include in its summary a transcript of any typed communication located in the chat associated with the virtual neighborhood meeting and written comments received before, during and after the meeting.

(b) Direct attendees of their virtual neighborhood meeting to the Louisville Metro Office of Planning and Design should attendees wish to submit comments directly to the Board of Zoning Adjustment.

(c) Submit a digital recording of the virtual neighborhood meeting to the Louisville Metro Office of Planning and Design with application submittal.

(6) **Effect of virtual neighborhood meeting.** An applicant who hosts a virtual neighborhood meeting which satisfies all requirements of this section may proceed with filing its formal application.

(7) **Second neighborhood meeting.** The Board of Zoning Adjustment reserves the right to require any applicant who chooses to hold a virtual neighborhood meeting to hold a second, in-person neighborhood meeting before the Board of Zoning Adjustment makes its final decision on the application

provided conditions permit such a meeting. Such a meeting may be required either by a vote of the body or upon request by PDS Staff. Reasons for such a requirement may include, but are not limited to:

(a) The conditions justifying the virtual neighborhood meeting may have also negatively impacted its attendance

(b) Testimony from those noticed of the virtual neighborhood meeting that they were unable to participate due to technological limitations.

(c) Any other reason under which the Board of Zoning Adjustment may regularly require an applicant to conduct an additional neighborhood meeting

**(8) Effect of return to normalcy.** When the circumstances which justify the exclusive use of virtual neighborhood meetings lapse, whether by the Board of Zoning Adjustment revoking its explicit grant of approval for the use of virtual meetings for the given condition or otherwise (such as a state of emergency being concluded), any virtual neighborhood meetings which had been properly noticed to occur within 14 days of such change in circumstances may proceed to be held as virtual neighborhood meetings, subject to the other conditions of this section. However, an in-person neighborhood meeting may be required in addition to the virtual neighborhood meeting at the discretion of the Board of Zoning Adjustment.

### 3.02 Applications

3.02.01 Every matter on which the Board is authorized or required to act, shall be presented in writing, or on forms provided by the Division of Planning and Design Services, for a specific presentation and shall include all information necessary for clear understanding and intelligent action by the Board. Such information, when requested by the Board, and/or the Division of Planning and Design Services, shall include, but not be limited to, maps, surveys, drawings, plans, charts, and descriptive data. All applicable fees must be paid at the time of application.

3.02.02 All matters to come before the Board shall be filed in the Board's office between 8:00 a.m. and 5:00 p.m., except on weekends and holidays

3.02.03 All appeals shall be filed in the Division of Planning and Design Services not later than thirty (30) days after the appellant, or his/her agent has received actual notice of the action of the

administrative official or other, from whose action the matter is appealed.

3.02.04 No new application or appeal shall be accepted for Board action within one year of Board action on an application on the same, or substantially the same tract of property, unless the Board finds and resolves that either:

- (1) substantial land use, economic or social changes affecting the property have occurred in the interim; or
- (2) the new application differs significantly from the original application. For purposes of this Policy, “differs significantly” shall mean:
  - (a) a different issue; or
  - (b) any other difference that the Board finds to constitute a significant change from the original application.

Applications made by governmental agencies shall not be subject to this policy nor shall such governmental applications affect the filing of subsequent non-governmental applications.

### 3.03 Notice

3.03.01 Whenever notice of a public hearing or meeting, or of a staff-approvable decision is required pursuant to the Kentucky Revised Statutes, the Land Development Code, the Board of Zoning Adjustment Bylaws or these Policies, it shall be the responsibility of the applicant to ensure that proper notice is postmarked for the required notice period. Proof of notice shall be provided by affidavit to the Board’s staff and the Board’s staff shall be mailed a copy of the notice at the same time it is provided as required under the Land Development Code.

3.03.02 It shall be the duty of the person or persons making the application to furnish to the Division of Planning and Design Services (i) the names and addresses of the owners of all property described in this section, and (ii) the addresses for all dwelling units located on all property described in (i), to be addressed to “Current Resident.” Records maintained by the Jefferson County Property Valuation Administrator may be relied upon conclusively to determine the identity and address of said owner(s). Addresses for “Current Resident” shall be obtained using available data from Louisville Metro Government, and those records may be relied upon conclusively to determine the dwelling units to be included in the supplemental notice. In the event a property described in



this section is held in a cooperative or condominium form of ownership, the person entitled to notice under this section on behalf of the owner shall be the president or chairman of the owner group that administers the property in common ownership. A joint notice may be mailed to two or more co-owners of a property described in this section where those co-owners are listed in the Property Valuation Administrator's records as having the same address.

### ~~3.04—Notice of Filing of Application~~

~~3.04.01—Notice of Filing of Application—Notice of any initial application (including applications by governmental entities), filed with the division of Planning & Design Services (PDS), related to (a) variance, and (b) a conditional use permit, shall be given to certain persons or entities by the methods indicated in paragraph 3.04.03 below. The submittal date shall be the date when PDS accepts the application as administratively complete, meaning an application determined to contain the information necessary to initiate agency review. For case types that require the pre-application process (i.e. conditional use permit), this notification requirement shall be applied only to the pre-application submittal, and shall not be required at the time the formal application is submitted. Once notice for an application has been given according to this section, no additional notice shall be required just because of changes in the application, unless the application has become a new case in the system. The notice required by this section, however, shall be in addition to any notice of further actions or hearings otherwise required by statute, ordinance or other regulation. Except for 3.04.01 (c), this provision shall not be applicable to staff approvable proposals.~~

~~3.04.02—The notice shall include the property address, the assigned case number, the name of the case manager, and a brief description of the request.~~

~~3.04.03—For applications listed in 3.04.01 as (a) through (b) above notice shall be given by the applicant, by depositing in the United States mail not more than seventeen (17) days following the submittal deadline date of the application to persons required to receive notice of public meetings according to the current Land Development Code and Planning Commission Policies and Procedures, Email notification shall also be given to any person subscribed to the Notification for Development Proposals List for the Council District in which the subject property is located.~~

~~3.04.04—It shall be the duty of the applicant to furnish to the Division of Planning and Design Services the names and addresses of the~~



~~parties, and in the case of the supplemental notice to be addressed to “Current Resident,” the address of the current residents, notified as required above and a copy of the notice sent within seven (7) calendar days after such notices are mailed. Records maintained by the Jefferson County Property Valuation Administrator (PVA) may be relied upon conclusively to determine the identity and address of said owners. Addresses for “Current Resident” shall be obtained using available data from Louisville Metro Government, and those records may be relied upon conclusively to determine the dwelling units to be included in the supplemental notice. In the event a property described in this section is held in a cooperative or condominium form of ownership, the person entitled to notice under this section on behalf of the owner shall be the president or chairperson of the owner group that administers the property in common ownership. A joint notice may be mailed to two or more co-owners of a property described in this section where those co-owners are listed in the Property Valuation Administrator’s records as having the same address.~~

~~3.04.05 — If the applicant does not submit the confirmation that the mailing took place within the seventeen (17) day period as mentioned in the preceding paragraph, then Planning & Design Services staff will cease all review of the application in question. Once the applicant submits the mailing confirmation to Planning & Design Services staff, then the application will be reinserted into the next current review cycle within the Case Management System, or the application will be docketed for public meeting if determined ready and complete by the case manager. The applicant will be responsible for any added costs associated with processing additional public meeting notices and/or meeting cancellation notices.~~

~~3.04.06 — Cases that are noticed for their public meeting or neighborhood meeting less than seventeen (17) days after the submittal deadline date shall be exempt from these application notification requirements.~~

DOCKET PROCEDURES POLICY .....4.00

- 4.01 The agenda of cases to be considered at any Board meeting shall be made available not less than three (3) business days before such meeting.
- 4.02 A member of the staff, or authorized agent thereof, shall post at least one printed notice of the hearing in a conspicuous location on or near the property or premises affected in the case. Such notice shall be posted at least three (3) business days prior to the date of hearing of the case.

PUBLIC HEARINGS..... 5.00

5.01 Public hearings shall be held in the courtroom of the Old Jail Building, Sixth and Liberty Streets, unless the Chairperson of the Board, or Director of Planning and Design Services designates some other place.

5.02 Copies of the agenda and staff reports shall be made available for review by the public at all Board meetings and public hearings.

5.03 Cases set for public hearing on a given day shall be heard in the order in which they appear on the agenda unless the Chairperson directs otherwise.

5.04 The Chairperson may rule testimony out of order if the testimony is redundant or irrelevant or if it is not presented at the proper time.

5.05 The Chairperson shall have the authority to determine the admissibility of evidence.

5.06 When a matter is set and advertised for a public hearing, the hearing shall be conducted, even if no interested party is present at the hearing, unless the Chairperson directs otherwise. If any party in attendance wishes to be heard on the record for a public hearing, said hearing may not be deferred, but may be continued after taking the testimony of those present, upon approval by the Board.

5.07 Within a reasonable time prior to the public hearing, any person planning to attend may request that the Board of Zoning Adjustment invite any governmental employee who has commented in writing on the proposal to come to the hearing, for the purpose of answering questions relating to said comments.

5.08 Each person who speaks at the public hearing shall furnish his or her name and address to the Board. All information presented orally to the Board shall be sworn testimony, and all individuals who come before the Board shall be required to swear an oath as to the veracity of the information they wish to present. Exceptions to this policy shall be granted for minors, who shall be permitted to give a first name only, prior to being sworn. Exceptions to this policy may also be granted for other individuals, at the discretion of the Chairperson, for good cause shown.

5.09 Each matter in the public hearing shall be heard in the following order:

5.09.01 The Chairperson of the Board of Zoning Adjustment, or other presiding officer, shall read the notice of the hearing.

5.09.02 A member of the staff shall present a summary of the staff report. The entire staff report, although not read, shall be made part of the record of the case.

5.09.03 The applicant, or his/her representative, shall make a statement giving reasons for the request. (If in the case of an appeal, the administrative official whose action is being

appealed, or his/her representative, shall state his or her case, including documentary evidence.)

- 5.09.04 Other persons in favor of the application/administrative action shall be heard.
  - 5.09.05 Those persons neither in favor of, nor opposed to application/administrative action, shall be heard.
  - 5.09.06 Those persons opposed to the application (or the appellant, in the case of an appeal) shall be heard.
  - 5.09.07 The applicant/administrative official, may be heard in rebuttal. Usually, only one person will be allowed to speak in rebuttal. Others may be allowed by the Chairperson for good cause.
- 5.10 The Board, at the discretion of the Chairperson, shall limit the time each person may speak.
- 5.10.01 An accumulative time limit of 15 minutes shall be granted to all those in support of the request, an accumulative time limit of 15 minutes shall be granted to all those in opposition to request, and an accumulative time limit of 15 minutes shall be granted to all interested parties neither in support, nor opposition to the request. The applicant or his or her representative shall be granted a 5 minute rebuttal.
  - 5.10.02 Hearing time limits may be extended by the Board of Zoning Adjustment Chairperson. Persons interested in requesting an extended hearing time limit may present their request to the chairman.
- 5.11 The appellant or applicant may appear on his/her own behalf, or may be represented by a duly-authorized agent at the hearing. In the absence of any personal appearance by the appellant, applicant, or authorized agent at a hearing, the Board shall proceed to dispose of the matter, based upon the record before it.
- 5.12 At any time during the hearing, members of the Board may ask any person in attendance questions relating to the case. In addition, during a person's time to speak, he/she may ask relevant questions of prior adverse or neutral speakers concerning any information presented, subject to the reasonable control of the Board. If new information is presented for the first time during rebuttal, the Board may allow prior adverse or neutral speakers to comment or ask questions, provided that such comments or questions shall be limited in scope to the new information presented during rebuttal testimony.
- 5.13 All evidence should be presented at the public hearing. No evidence may be received into the record after the conclusion of the public hearing. All public hearing books and other information to be presented to the Board shall be submitted no later

than the Tuesday prior to the public hearing. Applicants and others submitting materials should use every effort to present information supporting their positions using recyclable media.

5.14 Any exhibit which cannot be folded so as to fit easily into an 8 ½” x 14” folder shall be photographed and submitted in a form determined to be acceptable by staff of Planning and Design Services.

5.15 Following the public hearing, the Board may take any of the following actions:

5.15.01 Approve the request as submitted or modified

5.15.02 Deny of the request as submitted or modified

5.15.03 Close the hearing and defer action on the case to a regular business session of the Board

5.15.04 Continue the hearing to a later date for additional testimony related to the case.

5.16 Variances not requiring a public hearing.

5.16.01 The Board may approve the following variances without a public hearing if the applicant submits the written consent of all adjacent property owners:

a. Side yard and rear yard variances to permit a detached garage which is accessory to a single-family residential use or any addition to a principal single-family structure;

b. Variances to permit a garage or building addition to cover more than 30% of the rear yard on property used for detached single-family residential use; (note, this provision applies to principle structures in the Neighborhood Form District (NFD) only. Accessory structures in the NFD can encroach up to 50% and cumulative encroachment of accessory and principal structures shall not exceed 50%. TNFD does not permit any encroachment into a rear yard.)

c. Variances to permit any building to be closer than the required minimum distance to another building on the same lot;

d. Variances to allow a reduction in the private yard area in the Traditional Neighborhood Form District;

e. Variances to allow the accessory structure/use area to exceed the maximum depth in the Traditional Neighborhood Form District.

- f. A departure from a dimensional requirement of the Land Development Code of 10% or less.

5.16.02 Written consent as referenced in this Policy 5.16 shall be in the form of a document signed by each adjoining property owner immediately adjacent to the subject property and directly across the street from the subject property. At the time said consent is signed, the document shall be accompanied by a drawing to scale, including dimensions, showing the location of the existing and proposed structures in relation to property lines and in relation to each other.

5.16.03 Upon receipt of an application for variance that is eligible for approval by the Board without a public hearing, the staff shall docket such request at the next regular Board meeting, and such request shall be considered by the Board in open executive session.

5.17 Modified conditional use permits not requiring a public hearing.

5.17.01 The Board may approve the following modifications to conditional use permits without a public hearing:

- a. Decreases in intensity of development such as square footage, number of occupants, or number of beds.
- b. Increases in intensity of development such as square footage, number of occupants, or number of beds by less than 10 percent.
- c. Deletions or modifications to conditions of approval that do not impact landscape and screening requirements, parking requirements, or architectural design.

5.17.02 The Planning Director may approve minor changes to approved conditional use permit plans in accordance with Section 11.5A.1.D of the Land Development Code for minor changes in the square footage (decreases in square footage or increases not to exceed 10%) and other changes in the plan that do not effect intensity of development for plans approved within six months of the proposed change.

## 5.18 Nonconforming rights applications.

5.18.01 The Board of Zoning Adjustments authorizes the Planning Director and/or designee the ability to act upon applications for the recognition of nonconforming uses. In order to initiate such a request, an application must be made to the Office of Planning and Design Services. This authorization is in cases where there is sufficient evidence and documentation available in an application submitted to the Office and/or information

available to the staff of the Office to clearly determine that a property has lawful nonconforming rights to a use pursuant to KRS 100 and LDC section 1.3.1.

5.18.02 For a nonconforming rights application where the Planning Director and/or designee determines there is insufficient evidence to recognize a lawful nonconforming use, the staff of the Office of Planning and Design Services shall docket the case to the next available Board of Zoning Adjustment public hearing. The Board must review the application pursuant to KRS 100 and LDC section 1.3.1 to determine whether the property has nonconforming rights. The burden shall be on the applicant to provide documentation supporting the establishment of the nonconforming use and its continuous existence. All evidence and documentation shall be provided to each party (administrative official and applicant) in advance of the public hearing. Failure to provide in advance is grounds for a continuance, at the discretion of the Chairperson. Testimony under oath at the public hearing may be accepted as evidence; however the applicant should inform the administrative official of any such testimony in advance of the public hearing. Written notice of the public hearing shall be mailed to administrative official, property owner, and first tier property owners.

5.18.03 In cases where staff of the Office of Planning and Design Services asserts that a nonconforming use has been abandoned, the Board shall conduct a public hearing pursuant to LDC section 1.3.1.F. The burden shall be on the property owner to provide documentation supporting the nonconforming use's continuous existence. All evidence and documentation shall be provided to the Office in advance of the public hearing. Failure to provide in advance is grounds for a continuance, at the discretion of the Chairperson. Testimony under oath at the public hearing may be accepted as evidence; however the property owner should inform the administrative official of any such testimony in advance of the public hearing. Written notice shall be mailed to the property owner and first tier property owners.

5.18.04 Pursuant to LDC section 1.3.1.D, the Board may approve a change in nonconforming use. In order to initiate such a request, an application must be made to the Office of Planning and Design Services. An application for a change in nonconforming use shall be docketed for the next available Board of Zoning Adjustment public meeting. Written notice shall be mailed to first tier property owners.

ORDER OF BUSINESS..... 6.00

The order of business is a sequence in which business normally occurs at a session. Unless deviation from the normal sequence is requested by a member of the Board, or the Director of Planning and Design Services and approved by the Chairperson, the order of business shall be as follows:

1. Approval of Board Minutes from Previous meeting(s)
2. Business Session
3. Non-Hearing Cases
4. Public Hearing Cases
5. New Business
5. Reports of Officers and Committees
6. Adjournment

PUBLIC RECORDS POLICY..... 7.00

- 7.01 The Board of Zoning Adjustment shall conform to KRS 61.870 - 61.884, regarding open records.
- 7.02 Board of Zoning Adjustment public records are located in the Division of Planning and Design Services and Metro Development Center, 444 South 5<sup>th</sup> Street, 3<sup>rd</sup> Floor. Regular office hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday. The official custodian of the public records shall be as determined by the Louisville/Jefferson County Metro Government.