

**CITY OF JEFFERSONTOWN, KENTUCKY
JEFFERSON COUNTY, KENTUCKY**

ORDINANCE NO. 1285, SERIES 2012

**AN ORDINANCE RELATING TO THE ESTABLISHMENT OF
A BOARD OF ZONING ADJUSTMENT FOR THE CITY OF
JEFFERSONTOWN, KENTUCKY**

WHEREAS, the General Assembly has enacted an amendment to KRS 100.217, by adding thereto subsection (c); and,

WHEREAS, said amendment provides for a City of the Second Class, situated in a Consolidated Local Government, to create, by Ordinance, a Board of Adjustment, with exclusive jurisdiction within its corporate boundaries; and,

WHEREAS, the City of Jeffersontown, Kentucky is a City of the Second Class, situated in a Consolidated Local Government; and,

WHEREAS, the Jeffersontown, Kentucky City Council is desirous of creating a Board of Adjustment with exclusive jurisdiction within its corporate boundaries.

NOW, THEREFORE, BE IT ORDAINED as follows:

Section I. There is hereby created the Jeffersontown Board of Adjustment (JBOA), with exclusive jurisdiction within the corporate boundaries of Jeffersontown, Kentucky, to perform all acts, and have all powers and responsibilities required thereby for the enforcement of KRS 100.217 to and through KRS 100.271.

Section II. The Jeffersontown, Kentucky Board of Adjustment shall consist of five (5) members, all of whom must be citizen members.

Section III. The members shall be appointed by the Mayor of Jeffersontown, Kentucky, subject to the approval of the Jeffersontown, Kentucky City Council.

Section IV. The term of office for the Board of Adjustment shall be four (4) years, but the term of office of members first appointed shall be staggered so that a proportionate number serve one (1), two (2), three (3), and four (4) years respectively.

Section V. Vacancies shall be filled in accordance with KRS 100.217 (5).

Section VI. All members of the Board of Adjustment shall, before entering upon their duties, qualify by taking the Oath of Office described by Section 228 of the Constitution of the Commonwealth of Kentucky.

Section VII. Any member of the Board of Adjustment of the City of Jeffersontown, Kentucky may be removed pursuant to KRS 100.217 (8).

Section VIII. Members shall be reimbursed for actual expenses incurred.

Section IX. The Board of Adjustment annually shall elect a Chairman, Vice Chairman and Secretary, and any other officers it deems necessary, and any officer shall be eligible for reelection at the expiration of his/her term.

Section X. The City Clerk shall act as Clerk of the Board of Adjustment and the City Attorney shall act as Counsel to the Board of Adjustment.

Section XI. Any member of the Board of Adjustment may be removed by the Mayor for inefficiency, neglect of duty, malfeasance, or conflict of interest. In exercising this power of removal, to remove a member of the Board of Adjustment, the Mayor 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 Adjustment, which shall be open to the general public. The member so removed shall have the right of appeal from the removal to the Circuit Court of the county of which he/she resides.

Section XII.

(1) 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 for the meeting and the subject(s) which will be discussed.

(2) A simple majority of the total membership of the Board of Adjustment as established by agreement shall constitute a quorum. Any member of the Board of Adjustment who has any direct or indirect financial interest in the outcome of questions before the body shall disclose the nature of the interest and disqualify himself/herself from voting on the question.

(3) The Board of Adjustment shall adopt bylaws for the transaction of business and shall keep 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 abstains from voting, indicating the fact, all of which shall, immediately after adoption be filed in the office of the Board. If the Board has no office, such records may be kept in custody of an officer of the Board and shall be available to the general public. A transcript of the minutes of the Board of Adjustment shall be provided if requested by a party, at the expense of the requesting party, and the transcript shall constitute the record.

(4) The Board may appoint one (1) or more of its members to act as hearing examiner to preside over a public hearing or public meeting and make recommendations to the Board based upon a transcript or record of the hearing.

Section XIII. The Board of Adjustment shall have the power to issue subpoenas to counsel witnesses to attend its meetings and give evidence bearing upon the questions before it. The Jeffersontown Police Department shall serve such subpoenas. The Circuit Court may, upon application by the Board, counsel obedience to such court of such subpoena by proceedings of contempt.

Section XIV. The Chairman of the Board of Adjustment shall have the power to administer an oath to witnesses prior to their testifying before the Board upon any issue.

Section XV. The Board shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named in the zoning regulations which may be suitable only in specific locations in the zone only if certain conditions are met:

(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 limitation, requirements that one (1) or more things be done before the request can be initiated, or conditions of a continuing nature. Any such conditions shall be recorded in the Board's minutes and on the conditional use permit, along with a reference to the specific section in the zoning regulation listing the conditional use under consideration. The Board shall have power to revoke conditional use permits, or variances for noncompliance with the condition thereof. Furthermore, the Board shall have a right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in personam for such cost.

(2) Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of building, housing, and other regulations.

(3) 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, such conditional use permit shall not revert to its original designation unless there has been a public hearing. "Exercised," as set forth in this section, shall mean that binding contracts for the construction of the main building or other improvement have been let; or in the absence of contracts that the main building or other improvement is under construction to a substantial degree, or that prerequisite conditions involving substantial investment under contract, in development, are completed. When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions as set forth in the permit.

(4) The administrative official shall review all conditional use permits, except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the conditional use is located in order to ascertain that the landowner is complying with all of the conditions which are listed on the conditional use permit. If the landowner is not complying with all of the conditions listed on the conditional use permit, the administrative official shall report the fact in writing to the Chairman of the Board of Adjustment. The report shall state specifically the manner in which the landowner is not complying with the conditions on the conditional use permit, and a copy

of the report shall be furnished to the landowner at the same time that it is furnished to the Chairman of the Board of Adjustment. The Board shall hold a hearing on the report within a reasonable time, and notice of the time and place of the hearing shall be furnished to the landowner at least one (1) week prior to the hearing. If the Board of Adjustment finds that the facts alleged in the report of the administrative official 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 administrative official 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.

(5) Once the Board of Adjustment has completed a conditional use permit and all the conditions required are of such type that they can be completely and permanently satisfied, the administrative official, upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied, and enter the facts which indicate that the conditions have been satisfied and the conclusion in the margin of the copy of the conditional use permit which is on file. Thereafter said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.

(6) When an application is made for a conditional use permit for land located within or abutting any residential zoning district, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, administrative official, the mayor and city clerk of any city of the fifth or sixth class so affected within any county containing a city of the first class or a consolidated local government, an owner of every parcel of property adjoining the property to which the application applies, and such other persons as the local zoning ordinance, regulations, or Board of Adjustment bylaws shall direct. 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 name and address of an owner of each parcel of property as described in this subsection. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and 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 which administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two (2) or more co-owners of an adjoining property who are listed in the property valuation administrator's records as having the same address.

(7) When any property within the required notification area for a public hearing upon a conditional use permit application is located within an adjoining city, county, or planning unit, notice of the hearing shall be given at least fourteen (14) days in advance of the hearing, by first-class mail to certain public officials, as follows:

(a) If the adjoining property is part of a planning unit, notice shall be given to that unit's planning commission.

Section XVI. The Board shall have the power to hear and decide on applications for variances. The Board may impose any reasonable conditions or restrictions on any variance it decides to grant.

Section XVII.

(1) Before any variance is granted, the Board must find that 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:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone; and,
- (b) 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,
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

Section XVIII. The Board of Adjustment shall have the power to hear and decide cases where it is alleged by an applicant that there is error in any order, requirement, decision, grant, or refusal made by an administrative official in the enforcement of the zoning regulations. Such appeals should be taken within thirty (30) days.

Section XIX. Appeals to the Board may be taken by any person, or entity claiming to be injuriously affected or aggrieved by official action, order, requirement, interpretation, grant, refusal, or decision of any zoning enforcement officer. Such appeals shall be taken within thirty (30) days after the appellant or his agent receives notice of the action of the official by filing with said officer and with the board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. Said officer shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from with-taken shall be treated as and be the respondent in such further proceedings. At the public hearing on the appeal held by the Board, any interested person may appear and enter his appearance, and all shall be given an opportunity to be heard.

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

Section XXI. Any party aggrieved by any action of the Board may file an appeal to the Jefferson Circuit Court within thirty (30) days next following the final action of the Board.

**INTRODUCED AND READ AT A MEETING OF THE CITY COUNCIL OF THE
CITY OF JEFFERSONTOWN, KENTUCKY AT A MEETING HELD ON THE 20th
DAY OF November, 2012.**

READ, PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
JEFFERSONTOWN, KENTUCKY AT A MEETING HELD ON THE 4th DAY
OF December, 2012.

VETOED:

APPROVED:

BILL DIERUF, MAYOR



BILL DIERUF, MAYOR

DATE: _____

DATE: 12/4/12

ATTEST:

Bill Ff

BILL FOX, CITY CLERK