

§2.08 – BOARD OF ADJUSTMENT AND APPEAL

A. Authorized

There shall be a Board of Adjustment and Appeal (BAA) consisting of seven (7) members who shall be residents of Benton County. The Board shall have such powers and duties as are provided by law or ordinance.

B. Terms

The terms of office of the members of the Board shall be for two (2) years where four (4) members shall initially be appointed for the full two (2) years and the remaining three (3) members shall initially be appointed for one (1) year. Thereafter all members shall be appointed by the County Judge and Confirmed by the Quorum Court for terms of two (2) years each. The members shall elect their own chairman, who shall serve for one (1) year. No member shall serve more than two (2) consecutive full terms.

C. Member Background and Expertise

To the extent practicable and feasible, the Board shall include members with the following background and experience

1. One (1) Quorum Court member
2. One (1) land use attorney
3. One (1) civil engineer, structural engineer, or mechanical engineer
4. One (1) architect or landscape architect
5. One (1) city or regional planner
6. One (1) realtor or developer, and
7. One (1) master builder or a person with ten (10) or more years of experience in construction or supervision of construction of buildings.

8. Alternate Members

Three (3) alternate members, who shall be residents of the county, shall be appointed by the County Judge and confirmed by the Quorum Court to serve in the absence of, or disqualification of, the regular members. The first two (2) alternates appointed shall serve for terms of two (2) years and the third for one (1) year. Thereafter, all alternates shall be appointed for two-year terms.

9. Officers and Duties

The Board of Adjustment and Appeal shall elect its own presiding officers and adopt rules of procedure in the form of bylaws that are necessary to fulfill its duties. The rules of procedure must be in writing and comply with the Arkansas Open Meetings Law, Statutory land use hearing requirements, and this Ordinance.

10. Vacancies

The vacancy of any member or alternate member shall be filled by appointment of the Judge and confirmation by the Quorum Court for the unexpired term only.

11. Meetings

Meetings of the Board shall be held at the call of the chair and at such other times as the Board may determine. Such chair, or in his absence, the acting chair, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. Agenda items requiring a public hearing shall require sufficient notice as required by law and application deadlines reflect these requirements.

12. Required Attendance

If a member fails to attend three (3) consecutive meetings or misses 20 percent or more of the meetings held during a calendar year, the Judge, upon recommendation by the Chair, may declare the position vacant.

13. Removal

All members and alternates may be removed for cause by the County Judge, upon written charges after public hearing.

14. Office, Staffing, and Records

1. Office - The office of the Board shall be the Planning and Environmental Services Department or as may be otherwise designated by the Judge.
2. Staffing - The Director of the Planning and Environmental Services Department must provide the Board of Appeal and Adjustment with staff assistance necessary to enable it to discharge its duties including arrange for its meetings, and perform such other duties, consistent with the provisions of this chapter, as the adopted rules of the Board require.
3. Records – The Planning and Environmental Services Department shall be the custodian of the records of the Board of Adjustment and Appeal including all agendas, minutes, and other documents pertaining to the business of the Board.

15. Powers and Duties

1. The Board may, in appropriate cases and subject to appropriate conditions and safeguards, may grant relief to the terms of this Ordinance in harmony with its general purpose and intent in accordance with general or specific rules herein contained.
2. The Board shall adopt rules in accordance with the provisions of this chapter. The Board shall keep minutes of the proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. All testimony, objections thereto, and rulings thereon shall be taken down by

a reporter employed by the Board for that purpose. The presence of four (4) members shall be necessary to constitute a quorum.

3. Appeals to the Board may be taken by any person aggrieved, or by any officer, department, board or office of the County affected by any decision of an administrative official or appointed body in the administration, enforcement or quasi-judicial execution of this chapter. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An applicant shall deposit a sum sufficient to pay the costs of advertising as required by statute and ordinance. The clerk shall inform applicants of the estimated cost of advertising and require a deposit sufficient to meet the costs upon filing. All unexpended portions of the deposit shall be returned after the actual costs of advertising have been met.
4. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record, on application or notice to the officer from whom the appeal is taken and on due cause shown.
5. The Board shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person, by agent, or by attorney.
6. The Board shall have the following powers:
 - a. Appeals: To hear and decide appeals where it is alleged there is error, misinterpretation, oversight, or other means of incorrectly applying the provisions of this Ordinance in an order, requirement, decision, or determination made by an administrative official, board, commission, or other body in the administration or enforcement of this Ordinance. This shall include the provisions of the Flood Insurance Program and the provisions of the International Building Code (IBC) as so determined by the respective Chapters pertaining thereto.
 - b. Codes and Ordinances: To provide the final interpretation of the provisions of the Planning and Development Ordinance. This shall include the provisions of the Flood Insurance Program and the provisions of the International Building Code (IBC) as so determined by the respective Chapters pertaining thereto.
 - c. Variances: Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this Ordinance, to vary or modify the application of any of the regulations or provisions of this Ordinance relating to the construction or alteration of buildings or the use and development of land, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done.

- d. Use Determinations: To determine, in cases of uncertainty, the classification of any use not specifically enumerated in this chapter.
7. In exercising the above-mentioned powers, such Board may reverse or affirm, wholly or partly or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end, shall have all powers of the administrative official, board, commission, or other body from whom the appeal is taken.
8. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter before the Board.

Any person or persons, jointly or severally aggrieved by any decision of the Board, any taxpayer, or any officer, department, board or office of the County, may appeal a decision of the Board to a court of competent jurisdiction.

§2.9 – APPEALS

A. Scope:

1. As provided in §2.8 above, any order, requirement, decision, or determination (heretofore referred to as “the action”) made by an administrative official, board, commission, or other body in the administration or enforcement of this Ordinance may be appealed by the applicant or agent or any landowner or other stakeholder with standing noticed in regard to the action to the Board of Adjustment and Appeals.

B. Appeals Application: A written appeal must be filed with the Board within thirty (30) days of the decision sought to be appealed. The appeal must include the following materials:

1. A completed copy of BAA application.
2. Cover letter addressed to the Board explaining what relief or action is sought and the justification for the request.
3. Eight (8) sets of a plot plan showing the site and location of all structures, existing and proposed, in relation to the lot lines and, if applicable, indicate parking. Lot size and setback dimensions must be shown. Such plan shall be the same as that required of the original application, should one have been required.
4. Eight (8) sets of a floor plan, if applicable, showing dimensions of existing and proposed rooms and/or structures.
5. Eight (8) sets of a copy of the tax map (obtained from GIS) with the property highlighted.
6. Photos of property and area of concern (as applicable)

7. Owners affidavit (Owner, lessee, prospective purchase or legal representation must sign the application. A letter from the property owner giving permission to the applicant to represent the property, if applicable.)
8. All plans must also be folded neatly with each packet and banded.
9. In the application and cover letter, state specifically what decision is being contested, what ordinance or law section (s) that decision was made in pursuance of, and what relief is requested.

A. Appeals Procedures

1. Setting a Date: Upon the filing of an appeal, the Board administrative officer shall consult with the members, and upon conferring with the Chair who shall set a date, will schedule a hearing date, which shall be held on either a first or third Thursday.
2. Notice: The hearing shall be held within thirty (30) days of the application, preceded by at least fifteen (15) days' notice by certified mail to the appellant, and at the appellant's expense, to all landowners within one-thousand (1000) feet of the proposed development site.
3. The Board's decision shall be final, administratively.