

SECOND DRAFT

§2.08 – BOARD OF ADJUSTMENT AND APPEAL

A. Creation and Appointment

There shall be a Board of Adjustment and Appeal (BAA), herein referred to as the Board, 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.

1. Membership and Terms

The Board shall consist of seven (7) members appointed by the County Judge and confirmed by the Quorum Court for a term of two 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. No member shall serve more than two (2) consecutive full terms.

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.

2. 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.

3. Removal and Vacancies

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

B. Organization

1. Officers and Duties

The Board of Adjustment and Appeal shall elect a Chairperson and Vice Chairperson from among its membership. The Chairperson, or in his/her absence, the vice Chairperson, shall preside at all meetings.

2. Meetings

Meetings of the Board shall be held on a regular schedule, every first and third Thursdays of a month or 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.

3. 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.

4. Quorum

A quorum of the Board shall consist of four (4) members. 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.

5. Office, Staffing, and Records

Office - The office of the Board shall be the Planning and Environmental Services Department or as may be otherwise designated by the Judge.

Staffing - 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.

Records – The Planning and Environmental Services Department shall be the custodian of the records of the Board including all agendas, minutes, and other documents pertaining to the business of the Board.

C. Functions and Duties

The Board shall have the following functions:

a. Appeals of Interpretations

To hear appeals from administrative decisions with respect to the enforcement and application of the ordinance and affirm or reverse, in whole or part, the administrative decision. This may include alleged error, misinterpretation, oversight, or other means of incorrectly applying the provisions of this ordinance including the provisions of the Flood Damage Prevention program and the provisions of the International Building Code (IBC) as determined by their respective chapters.

b. Requests for Variances

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To hear requests for variances from the literal provisions of this ordinance in instances where strict enforcement of the zoning ordinance would cause undue hardship due to circumstances unique to the individual property under consideration and to grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of this ordinance. The board of adjustment and appeals may impose conditions in the granting of a variance to ensure compliance and to protect adjacent property.

c. Land Use Determinations

To determine, in cases of uncertainty, the classification of any land use not specifically enumerated in this chapter.

§2.9 – APPEALS PROCEDURES

A. 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.** 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.)
2. Cover letter addressed to the Board explaining what relief or action is sought and the justification for the request.
3. Seven (7) sets of survey plan/ site plan showing the lot size, location of all structures, existing and proposed, setbacks, parking and loading facilities, if applicable. Such plan shall be the same as that required of the original application, should one have been required.
4. Photos of property and area of concern (as applicable)

B. Appeals Procedures

1. Setting a Date: Upon filing of an appeal, the Planning staff shall schedule a hearing date.
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.

C. Appeals to the decision of the board of adjustment and appeals

1. Court of record - All appeals to the decision of the board of adjustment and appeals shall be subject to appeal only to a court of record having jurisdiction.

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2. County quorum court may elect to act as a board of administrative appeal prior to an appeal to a court of record from a decision of the board of adjustment and appeals. The County judge shall be the chair of the board of administrative appeal but shall vote only in the event of a tie. The county quorum court shall determine the number of quorum court members who shall sit on the board of administrative appeal.
3. Any appeal concerning roads shall be appealed directly to circuit court in accordance with Arkansas State Code A.C. A §14-17-209.