

INTRODUCED BY: Eric L. Buckson  
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ADOPTION DATE: \_\_\_\_\_  
EFFECTIVE DATE: Upon Adoption

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**Ordinance LC17-18**  
**Board of Adjustment**

An Ordinance to amend Kent County Code, Vol. II, Chapter 205, Zoning, as amended by repealing and replacing Article XXVII, Board of Adjustment in order to rearrange the sections of the Article, clarify the public hearing procedures for applications and allow for administrative variances of area and bulk requirements subject to specific limitations.

**THE LEVY COURT OF KENT COUNTY, DELAWARE, HEREBY ORDAINS:**

**Section 1.** That the Kent County Code, Vol. II, Chapter 205, Zoning, Article XXVII, Board of Adjustment is hereby amended by deleting the following bracketed language shown with strike-through marks

Article XXVII  
**Board of Adjustment**

**~~§ 205-398 Organization.~~**

- ~~A. The Levy Court shall appoint a Board of Adjustment of seven members. The members shall be appointed for an undefined term concurrent with that of the appointing Commissioner, to be served at the pleasure of a majority of the Levy Court. Each Levy Court Commissioner shall be entitled to submit the name of a qualified appointee residing in his district for consideration and confirmation by the Levy Court. The persons appointed to the Board of Adjustment shall be individuals with knowledge of and experience in dealing with the problems of urban and rural development. At the time of appointment, they shall not be candidates for or in elective office. **[Amended 1-2-2001 by Ord. No. 01-01]**~~
- ~~B. Vacancies shall be filled for the unexpired term in the same manner as in the case of regular appointments. **[Amended 1-2-2001 by Ord. No. 01-01]**~~
- ~~C. The Levy Court shall provide compensation for services rendered and for payment of necessary expenses of the members of the Board in accordance with the Board's Bylaws.~~
- ~~D. Subject to the approval of the Levy Court, the Board may employ such secretarial~~

~~and technical assistance as may required to perform its functions properly.~~

~~E. The Board shall adopt rules for the conduct of its business, such rules to be made available to the public. For the conduct of any hearing, a quorum shall be not less than four members and an affirmative vote of four members of the Board shall be required to overrule any decision, ruling or determination of the official charged with enforcement of this chapter, or to approve any variance.~~

~~§ 205-399 Procedure for appeals to Board of Adjustment.~~

~~A. Appeals to the Board of Adjustment may be made by any person refused a building permit or from the decision of any administrative officer or agency made by the administration or enforcement of the provisions of this chapter. Appeals to the Board of Adjustment may also be made by any officer, department, board or bureau of the County affected by the grant or refusal of a building permit or by other decision of an administrative officer or agency made by the administration or enforcement of the provisions of this chapter.~~

~~B. Such appeal shall be made within 30 days of the administrative officer's or agency's written decision by filing a notice of appeal, specifying the grounds for the appeal, with the Secretary to the Board. An appeal shall stay all proceedings in furtherance of the decisions being appealed unless the Secretary to the Board certifies that in his opinion, by reason of facts stated in the appeal, a stay would cause imminent peril to life or property. In such instances, case proceedings shall not be stayed other than through a restricting order granted by the Board or court of record, upon notice to the Secretary to the Board. [Amended 1-16-1996 by Ord. No. 96-01]~~

~~C. The Board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof, as well as due notice to the parties of interest, and decide the same within 60 days. Public notice of hearing shall consist of a publication at least 15 days before the date of the hearing in a newspaper of general circulation in the County, specifying the time, place and nature of the hearing, which hearing is to be held not less than five days nor more than 10 days after final publication. In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination being appealed.~~

~~D. The Board shall designate a secretary to keep minutes of its proceedings and other official actions which shall be filed in the office of the Board and shall be public records. The Chairman of the Board or, in his absence, the Vice Chairman may administer oaths and compel the attendance of witnesses.~~

~~§ 205-400 Powers of Board of Adjustment upon appeals.~~

~~Upon appeals, the Board of Adjustment shall have the following powers:~~

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- ~~A. To hear and decide appeals where it is alleged by the appellant there is an error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of the zoning regulations.~~
- ~~B. To hear and decide, in accordance with the provisions of any zoning regulations, requests for interpretation of the map or for decisions upon other special questions upon which the Board is authorized by any zoning regulation to pass.~~
- ~~C. Variances.~~
- ~~(1) Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of the regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation adopted under this article would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship, other than financial, upon such property, a variance from such strict application so as to relieve such difficulties or hardship, provided that such relief may be granted without substantially impairing the intent and purpose of the zoning plan and zoning regulations.~~
- ~~(2) Variances are to be granted only when the conditions upon which the request is based are unique to the property for which the variance is sought and are not applicable generally to other property. The hardship must be created by the unique physical characteristics of the property, and not by the real or perceived inconvenience of the property owner. This section is not to be used to permit more than one dwelling unit on a property, or to create irregularly shaped (flag or pipestem) lots.~~
- ~~(3) The Board of Adjustment shall have the authority to impose any appropriate condition to the approval of a variance it deems necessary to protect the health, safety and welfare of the community.~~

~~§ 205-401 Lapse of variance.~~

~~After the Board of Adjustment has granted a variance, the variance so approved or granted shall lapse after the expiration of one year after the date of the notice of the decision if no substantial construction or change of use has taken place in accordance with the plans for which such variance was granted, or if the Board does not specify some longer period than one year for good cause shown, and the provisions of these regulations shall thereafter govern.~~

~~§ 205-402 Amendment of variance.~~

~~The procedure for amendment of a variance already approved or a request for a change of conditions attached to an approval shall be the same as for a new application, except that where the Secretary to the Board determines the change to be minor relative to~~

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~~the original approval, he may transmit the same to the Board with the original record without requiring that a new application be filed.~~

~~§ 205-403 Appeals to courts.~~

~~Any person jointly or severally aggrieved by any decision of the Board of Adjustment may present to the Superior Court in and for Kent County a petition setting forth that such decision is illegal in whole or in part, specifying the grounds for the illegality. The petition shall be presented to the Court within 30 days after the filing of the decision in the office of the Board (9 Del. C. § 4918).~~

~~§ 205-404 Reduction in minimum yard requirements.~~

~~[Added 12-8-1992 by Ord. No. 92-13]~~

~~A. Notwithstanding any other provision of this chapter, Director of Planning Services shall have the authority, as qualified below, to approve a reduction in the minimum yard requirements in the case of any building existing or partially constructed which does not comply with such requirements applicable at the time such building was erected. Such a reduction may be approved by the Director of Planning Services in accordance with the following provisions:~~

- ~~(1) The error does not exceed 10% of the measurement that is involved, or five feet, whichever is greater.~~
- ~~(2) The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a building permit, if such was required.~~
- ~~(3) Such reduction will not impair the purpose and intent of this chapter.~~
- ~~(4) It will not be detrimental to the use and enjoyment of other property in the immediate vicinity.~~
- ~~(5) It will not create an unsafe condition with respect to both other property and public streets.~~
- ~~(6) To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.~~
- ~~(7) The reduction will not result in an increase in density or impervious surface ratio from that permitted by the applicable zoning district regulations.~~

~~B. In approving such a reduction under the provisions of this section, the Director of Planning Services shall allow only a reduction necessary to provide reasonable relief and, as deemed advisable, may prescribe such conditions, to include landscaping and screening measures to assure compliance with the intent of this~~

~~chapter.~~

- ~~C. Upon the approval of a reduction for a particular building in accordance with the provisions of this section, the same shall be deemed to be a lawful building.~~
- ~~D. The Director of Planning Services shall have no power to waive or modify the standards necessary for approval as specified in this section.~~
- ~~E. If there is an error greater than 10% of the measurement that is involved, the application shall be referred to the Board of Adjustment in accordance with this chapter.~~

~~§ 205-405 Variance application and procedures.~~  
~~[Added 12-8-1992 by Ord. No. 92-13]~~

- ~~A. Applications for a variance shall be submitted to the Department of Planning Services, Division of Planning. The application shall be in such form and contain such information and documentation as shall be prescribed from time to time by the Director of Planning Services but shall in all instances contain at least the following information and documentation: [Amended 5-9-1995 by Ord. No. 95-12]~~
  - ~~(1) Ten copies of a site plan not to exceed 24 inches by 36 inches nor be less than 8 1/2 inches by 11 inches. The site plan shall be drawn on dimensionally stable reproducible sheets and shall be drawn to scale and shall be at a scale of one inch equals 50 feet or larger.~~
  - ~~(2) Property lines, rights of way and easements within 50 feet as a minimum of adjoining parcels.~~
  - ~~(3) Current zoning of the subject site and adjacent properties; adjacent platted and unplatted parcels shall be identified with the legal description and owner's name.~~
  - ~~(4) Boundaries of the property with dimensions and with building setback lines on all sides.~~
  - ~~(5) Existing and proposed streets with right of way dimension, lots, reservations, easements and areas dedicated to public use.~~
  - ~~(6) Location of existing and proposed buildings; number of stories; gross square footage; retaining walls, fences, culverts, bridges, roadways.~~
  - ~~(7) Limits of existing flood hazard areas.~~
  - ~~(8) Location of existing and proposed utilities (water, septic/sewer, gas, electric, telephone) with related easements.~~

- ~~(9) Location of power poles, guy wires and other major electrical equipment.~~
- ~~(10) Location of existing and proposed parking; location of existing and proposed access and driveways.~~
- ~~(11) Location, size and height of any signs.~~
- ~~(12) Location and nature of existing and proposed fencing and/or screening and general landscaping.~~
- ~~(13) North arrow, scale, acreage.~~
- ~~(14) A clear designation of the features of the proposed development or use which require a variance and the extent of the variance requested.~~
- ~~(15) Any other information that may be required to be shown on the site plan by the Director of Planning Services to determine that the application is in compliance with the codes and ordinances of the County.~~
- ~~B. A statement of the particular requirements of this chapter by citation and description.~~
- ~~C. A statement of the characteristics of the subject property which prevents compliance with said requirements of this chapter.~~
- ~~D. A statement of the minimum variance of the requirements of this chapter which would be necessary to permit the proposed activity.~~
- ~~E. A statement of the exceptional or undue hardship which would result if said particular requirements of this chapter were applied to the subject property.~~
- ~~F. Such other and further information and documentation as the Director of Planning Services or the Board of Adjustment may be deemed necessary or appropriate to a full and proper consideration and disposition of the particular application.~~
- ~~G. Upon receipt of a completed application:
  - ~~(1) The Director of Planning Services shall determine whether or not the variance requested is a yard variance of not more than 10% of the applicable regulations of this chapter. In any case where the variance requested is not a yard variance of less than 10%, the Director of Planning Services shall refer it to the Board of Adjustment for hearing and decision as herein provided.~~
  - ~~(2) In any case of a yard variance of not more than 10%, the Director of Planning Services shall give written notice to adjacent property owners and accept written statements for 10 working days from the date of mailing and shall then grant or~~~~

~~deny the requested variance.~~

- ~~(3) In taking any such action the Director of Planning Services shall be governed by all the procedures, standards and limitation of this chapter applicable to the Board of Adjustment in granting yard variances, except the public hearing requirements.~~
- ~~(4) The decision of the Director of Planning Services shall be appealable to the Board of Appeals.~~
- ~~(5) Within 15 working days after the application for administrative variance is submitted and accepted, the Director of Planning Services shall approve, conditionally approve or deny such application. The Department of Planning Services, Division of Planning, shall inform the subdivider, in writing, of the conditions, if any, for approval or the reasons for disapproval. Such written notice shall also describe the process of appeals. A copy of the written notice shall be kept in the permanent records of the Kent County Department of Planning Services, Division of Planning.]~~

**Section 2.** That the Kent County Code, Vol. II, Chapter 205, Zoning, Article XXVII, Board of Adjustment is hereby amended by adding the following underlined language:

Article XXVII  
**Board of Adjustment**

**§ 205-398 Organization.**

- A. The Levy Court shall appoint a Board of Adjustment of seven members. The members shall be appointed for an undefined term concurrent with that of the appointing Commissioner, to be served at the pleasure of a majority of the Levy Court. Each Levy Court Commissioner shall be entitled to submit the name of a qualified appointee residing in his district for consideration and confirmation by the Levy Court. The persons appointed to the Board of Adjustment shall be individuals with knowledge of and experience in dealing with the problems of urban and rural development. At the time of appointment, they shall not be candidates for or in elective office.
- B. Vacancies shall be filled for the unexpired term in the same manner as in the case of regular appointments.
- C. The Levy Court shall provide compensation for services rendered and for payment of necessary expenses of the members of the Board in accordance with the Board's Bylaws.

- D. Subject to the approval of the Levy Court, the Board may employ such secretarial and technical assistance as may be required to perform its functions properly.
- E. The Board shall adopt rules for the conduct of its business, such rules to be made available to the public. For the conduct of any hearing, a quorum shall be not less than four members and an affirmative vote of four members of the Board shall be required to overrule any decision, ruling or determination of the official charged with enforcement of this chapter, or to approve any variance.

**§ 205-399 Powers of Board of Adjustment.**

The Board of Adjustment shall have the following powers:

- A. To hear and decide appeals where it is alleged by the appellant there is an error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of the zoning regulations.
- B. To hear and decide, in accordance with the provisions of any zoning regulations, requests for interpretation of the map or for decisions upon other special questions upon which the Board is authorized by any zoning regulation to pass.

**§ 205-400 Procedure for applications to Board of Adjustment.**

A. Appeals

- (1) Appeals to the Board of Adjustment may be made by any person refused a building permit or from the decision of any administrative officer or agency made by the administration or enforcement of the provisions of this chapter. Appeals to the Board of Adjustment may also be made by any officer, department, board or bureau of the County affected by the grant or refusal of a building permit or by other decision of an administrative officer or agency made by the administration or enforcement of the provisions of this chapter.
- (2) Such appeal shall be made within 30 days of the administrative officer's or agency's written decision by filing a notice of appeal, specifying the grounds for the appeal, with the Secretary to the Board. An appeal shall stay all proceedings in furtherance of the decisions being appealed unless the Secretary to the Board certifies that in his opinion, by reason of facts stated in the appeal, a stay would cause imminent peril to life or property. In such instances, case proceedings shall not be stayed other than through a restricting order granted by the Board or court of record, upon notice to the Secretary to the Board.
- (3) In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination being appealed.



C. Variances.

- (1) Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of the regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation adopted under this article would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship, other than financial, upon such property, a variance from such strict application so as to relieve such difficulties or hardship, provided that such relief may be granted without substantially impairing the intent and purpose of the zoning plan and zoning regulations.
- (2) Variances are to be granted only when the conditions upon which the request is based are unique to the property for which the variance is sought and are not applicable generally to other property. The hardship must be created by the unique physical characteristics of the property, and not by the real or perceived inconvenience of the property owner. This section is not to be used to permit more than one dwelling unit on a property, or to create irregularly shaped (flag or pipestem) lots.
- (3) The Board of Adjustment shall have the authority to impose any appropriate condition to the approval of a variance it deems necessary to protect the health, safety and welfare of the community.

D. Public Notice

No hearing shall be held by the Board until notice of time and place thereof has been provided to the applicant and property owners within 200 feet of the subject property at least 15 days before the date of said hearing. Notice shall be provided as follows:

- (1) Staff shall notify by regular mail all property owners within 200 feet of the extreme limits of the subject property as their names appear in the County tax record at least 15 days prior to the hearing.
- (2) The Department shall provide notice to the general public of the public hearing before the Commission by publishing the date, time, place, and nature of the hearing at least 15 days before the hearing in a newspaper of general circulation in the County.
- (3) The Commission's staff will also post a notice outlining the date, time, place, and nature of the hearing in a conspicuous location on the property.
- (4) The published and posted notices shall contain reference to the time and place or places within the County where the application is available for review.

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E. The Board shall designate a secretary to keep minutes of its proceedings and other official actions which shall be filed in the office of the Board and shall be public records. The Chairman of the Board or, in his absence, the Vice Chairman may administer oaths and compel the attendance of witnesses.

**§ 205-401 Lapse of variance.**

After the Board of Adjustment has granted a variance, the variance so approved or granted shall lapse after the expiration of one year after the date of the notice of the decision if no substantial construction or change of use has taken place in accordance with the plans for which such variance was granted, or if the Board does not specify some longer period than one year for good cause shown, and the provisions of these regulations shall thereafter govern.

**§ 205-402 Amendment of variance.**

The procedure for amendment of a variance already approved or a request for a change of conditions attached to an approval shall be the same as for a new application, except that where the Secretary to the Board determines the change to be minor relative to the original approval, he may transmit the same to the Board with the original record without requiring that a new application be filed.

**§ 205-403 Appeals to courts.**

Any person jointly or severally aggrieved by any decision of the Board of Adjustment may present to the Superior Court in and for Kent County a petition setting forth that such decision is illegal in whole or in part, specifying the grounds for the illegality. The petition shall be presented to the Court within 30 days after the filing of the decision in the office of the Board (9 Del. C. § 4918).

**§ 205-404 Administrative Variance**

A. Notwithstanding any other provision of this chapter, Director of Planning Services shall have the authority, as qualified below, to approve certain adjustments to specific requirements of this chapter. Such a reduction may be approved by the Director of Planning Services in accordance with the following provisions:

(1) Limits for the adjustment are as follows:

- a. Setbacks: Maximum possible adjustment of 10 percent of the measurement that is involved, or 5 feet, whichever is greater; however, no structure shall be permitted closer than 5 feet to a property line.
- b. Impervious Cover: Maximum possible adjustment of 3 percent.

- c. Variances are not allowed for standards pertaining to the number of dwelling units permitted, parking requirements, height of building, vision clearance area, density, or use of property
    - (2) Such reduction will not impair the purpose and intent of this chapter.
    - (3) It will not be detrimental to the use and enjoyment of other property in the immediate vicinity.
    - (4) It will not create an unsafe condition with respect to both other property and public streets.
    - (5) If compliance with the minimum requirements would cause unreasonable hardship upon the owner.
    - (6) The reduction will not result in an increase in density from that permitted by the applicable zoning district regulations.
- B. In taking any such action the Director of Planning Services shall be governed by all the procedures, standards, and limitations of this chapter applicable to the Board of Adjustment in granting variances, except the public hearing requirements. In approving such a variance under the provisions of this section, the Director of Planning Services shall allow only a variance necessary to provide reasonable relief and, as deemed advisable, may prescribe such conditions, to include landscaping and screening measures to assure compliance with the intent of this chapter.
- C. Upon the approval of a variance for a particular building in accordance with the provisions of this section, the same shall be deemed to be a lawful building.
- D. The Director of Planning Services shall have no power to waive or modify the standards necessary for approval as specified in this section.
- E. Any variance request greater than the limits listed above shall be referred to the Board of Adjustment in accordance with this chapter.
- F. The Director of Planning Services shall give written notice to property owners within 200 feet of the subject property and accept written statements for 10 working days from the date of mailing. If a letter of objection is received within the 10 working days, the application shall be denied and the applicant may apply to the Board of Adjustment for consideration.
- G. If no letter of objection is received, the Director of Planning Services or designee shall approve, conditionally approve or deny such application within 15 working

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days after the application for administrative variance is submitted and accepted, The Department of Planning Services, Division of Planning, shall inform the applicant, in writing, of the conditions, if any, for approval or the reasons for disapproval. Such written notice shall also describe the process of appeals. A copy of the written notice shall be kept in the permanent records of the Kent County Department of Planning Services, Division of Planning.

H. The decision of the Director of Planning Services shall be appealable to the Board of Adjustment.

**§ 205-405 Variance application and procedures.**

Applications for a variance shall be submitted to the Department of Planning Services, Division of Planning. The application shall be in such form and contain such information and documentation as shall be prescribed from time to time by the Director of Planning Services but shall in all instances contain at least the following information and documentation:

- A. A completed application form with the signatures of legal owners.
- B. A plot plan accurately describing the location of all existing and proposed structures in relation to the property lines, the location of the well and septic (if applicable), the lines and distances of each property line, the location of any easement or rights-of-way affecting the property, and the location and width of the frontage street/road.
- C. A statement of the particular requirements of this chapter by citation and description.
- D. A statement of the minimum variance of the requirements of this chapter which would be necessary to permit the proposed activity.
- E. A statement of the exceptional or undue hardship which would result if said particular requirements of this chapter were applied to the subject property.
- F. Such other and further information and documentation as the Director of Planning Services or the Board of Adjustment may be deemed necessary or appropriate to a full and proper consideration and disposition of the particular application.

**Section 3. Severability.**

The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of Delaware by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

**Section 4. Effective Date.**

This Ordinance shall be effective upon the date of adoption.

ADOPTED BY THE LEVY COURT OF KENT COUNTY,  
DELAWARE

\_\_\_\_\_  
President, Kent County Levy Court

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

ATTEST: \_\_\_\_\_  
Clerk of the Peace

**Synopsis:** The ordinance rearranges the sections of the Article, clarifies the public hearing procedures for applications, and allows for administrative variances of area and bulk requirements subject to specific limitations.