

# Zone Change FAQs

## **What is a zoning map amendment?**

A zoning map amendment, or zone change, is the procedure for changing the zoning classification of a property to allow certain land uses.

## **Who can rezone a property?**

The owner, Planning Commission, or legislative body (Bardstown City Council, Bloomfield City Council, Fairfield City Commission, New Haven City Commission or Nelson County Fiscal Court) may initiate a zone change. Regardless of initiation, a public hearing is required for all zone change requests.

## **I have been contacted about selling my property but a zone change will be needed. Do I have to make the request?**

Yes. The current property owner must be the applicant of zone change requests. The developer and potential buyer may be listed as the co-applicant.

## **How do I file for a zone change?**

There are several steps for zoning map amendments. Please refer to the “step-by-step” pamphlet.

## **How long does a zone change take?**

Because of the notification, hearing, and ordinance readings and publication, the approximate time frame for a zone change is 8 to 10 weeks.

## **How are zoning decisions made?**

The zone change process is quasi-judicial and has two key elements: (1) the finding of facts regarding the specific proposal and (2) the measurement of those facts against predetermined standards. This quasi-judicial process invokes constitutional requirements to ensure the fair and reasonable application of zoning regulations and requires an impartial decision-maker and decisions based solely on legitimately acquired, presented, and considered evidence. Witnesses testify under oath and are subject to cross-examination. Evidence must be relevant to the issue before the quasi-judicial body. Decisions must be reduced to writing with findings of facts based on substantial, competent, and material evidence appearing in the record of the hearing. Decision-makers must be impartial, and ex parte communications are prohibited.

## **What occurs at the public hearing?**

The Planning Commission appoints one of its members as the hearing officer. The Planning Commission’s court reporter records the official hearing transcript, and the Planning Commission staff also attends the hearing. At this hearing, the staff, applicant, proponents, and opponents will present their testimony and evidence on the zone change request. The Planning Commission will not make recommendations at the hearing but will consider the zone change request at its meeting on the 4<sup>th</sup> Tuesday of the month.

## **Does everyone have the opportunity to speak at the public hearing?**

Yes. The public hearing is the only opportunity for proponents and opponents to voice their support or opposition. All individuals will have the opportunity to make comments and ask questions. It is recommended that redundant statements or questions be limited to avoid a lengthy hearing and transcript and that groups of opponents designate representatives to speak on their behalf rather than have all opponents say the same thing repeatedly. It is much more effective for the group’s representative to state for the record the number of their group in attendance at the hearing and then ask them to stand to show their opposition or support. Both proponents and opponents shall limit their presentation and comments to the rezoning request.

**What if I am opposed to the zone change but can't attend the hearing? Can a letter or petition be submitted and read at the public hearing or can I be represented at the hearing?**

The Planning Commission and legislative body can consider only testimony and evidence presented at the public hearing in making its decision. Since no questioning of the signees is possible, letters and signed petitions from persons not present at the meeting or not represented by an attorney may not be considered by the Planning Commission or legislative body.

**If I'm opposed to the zone change, can I discuss the rezoning with the Planning Commission staff?**

Definitely. The Planning Commission staff is available to provide assistance to both opponents and proponents. The zone change files, staff reports, and transcripts are all open records. Opponents and proponents are encouraged to contact or visit the Planning Commission office prior to the hearing to review and obtain copies of zone change files, staff reports, transcripts, and plans, regulations, ordinances, and staff reports and to discuss the process. A minimal fee is charged for copies.

**May I discuss the zone change request with the Planning Commissioners?**

The zone change process involves quasi-judicial proceedings designed to ensure fair and reasonable application of predetermined public policies to an individual zone change case. In order to satisfy the requirement that decision-makers be impartial, unbiased, and not predisposed, *ex parte* communications, or written or oral communications with decision-makers outside of the formal hearing, are prohibited.

**What if I have additional information that I didn't present at the hearing?**

It is very important to present all evidence and testimony at the Planning Commission hearing. By law, the Planning Commission or legislative body cannot take additional testimony or evidence outside of the public hearing.

**What does the legislative body do?**

Because the legislative body adopts the official zoning map by ordinance, zoning map amendments must also be approved by ordinance. Final action by the legislative body will require two readings and publication of the zoning map amendment ordinance. Upon receipt of the Planning Commission's recommendation, the legislative body will consider only the official record and may either uphold or overturn the Planning Commission's recommendation. The legislative body also has the option to hold its own public hearing to take additional testimony; however, this is rarely done.

**If I am opposed to a zone change and the legislative body approves it, is that the end?**

Under state law, an aggrieved party may challenge the zone change by appealing to Nelson Circuit Court. A judicial review will involve the following: (1) reviewing the record for errors in law; (2) insuring that procedures specified in both statute and ordinance were used; (3) insuring that due process rights were protected, including the right to offer evidence, cross-examine witnesses, and inspect documents; (4) insuring that decisions were supported by competent material and substantial evidence in the whole record; (5) insuring that decisions were not arbitrary and capricious; and, (6) insuring that the decision-makers were impartial, unbiased, and not predisposed.

**For more information, please contact:  
Joint City-County Planning Commission of Nelson County  
Old Courthouse Building, One Court Square, 2nd Floor  
P.O. Box 402  
Bardstown, Kentucky 40004  
Telephone: (502) 348-1805 Fax: (502) 348-1818  
Email: [ncpz@bardstowncable.net](mailto:ncpz@bardstowncable.net)**

# Step-by-Step Process for Zone Changes

This pamphlet has been prepared to inform individuals of the process for zone changes (zoning map amendments) and to provide useful information for avoiding expensive and time-consuming problems.

## Step 1: Pre-Application Conference & Preparation

The owner and/or his attorney schedules a pre-application conference with the Planning Commission staff at least one week prior to the filing deadline for zone changes (see deadline schedule). The applicant should be prepared to discuss the proposed development concept and should bring an aerial photograph delineating the subject property boundaries and other supporting documentation, such as deeds, surveys, plats, etc. to the conference. The purposes of the pre-application conference are:

- To allow the staff to discuss the effect of the Comprehensive Plan, Zoning Ordinance, Subdivision Regulations, and any other land development regulations upon the proposed zone change request, and,
- To provide the applicant with a general idea of the feasibility of the project before making commitments for more extensive project planning and development.

## Step 2: Pre-Application Conference

The pre-application conference usually involves the applicant, his attorney and/or other representatives (engineer, architect, or surveyor) and Planning Commission staff. When appropriate, representatives from public works, utility companies, or other agencies may participate. The following is a typical agenda for a pre-application conference:

- The applicant provides a summary of the proposed development.
- The staff determines whether the proposed use is permitted in the requested zoning district, determines the subject property's future land use designation, and discusses the statutory requirements for the requested zone change.
- The staff determines and explains the required threshold requirements that must be met or agreed to by the owner before the application will be accepted.
- When applicable, the staff discusses additional requirements, such as conditional use or variance, environmental impact statements, traffic analysis, etc.
- The applicant and staff discuss binding elements, which are restrictions, agreed to by the applicant, on the otherwise legal use and development of a parcel of land under applicable regulations and ordinances. Binding elements run with the land until revised or removed by an appropriate action of the Planning Commission, must be in a format specified by the Planning Commission, must be signed by all owners necessary to convey title to the property, shall not include private contractual matters such as those ordinarily found in deed covenants or subdivision restrictions which are not directly enforceable by the Planning Commission, must be followed in the preparation and approval of subdivision plats, and must be reflected, where applicable, in the issuance of zoning compliance permits.
- The staff provides an application packet and reviews the zone change process with the applicant.

## Step 3: Application Submission

The Applicant completes the application, assembles the required documents, and submits the application and the following required documentation and fees to the Planning Commission on or before 4:30 p.m. on the filing deadline. Zone change applications received after the scheduled deadline date will be accepted for the following meeting date (see deadline schedule).

## Step 4: Initial Staff Review

The Planning Commission staff performs an initial review of the application for completeness by 4:30 p.m. on the filing deadline. If the staff determines that deficiencies exist in the application or accompanying documentation, the staff notifies the applicant of any deficiencies by 4:30 p.m. on the filing deadline. The applicant has until 4:30 p.m. the next business day to correct the application deficiencies. ***If the applicant fails to correct the deficiencies, the incomplete application and filing fees will be placed with the receptionist for pickup by the applicant.***

## Step 5: Public Notice & Staff Review

Before the public hearing for any zone change, the Planning Commission staff carries out the following public notification requirements:

- Mailed notification to all adjacent property owners ;
- Published notification in the local newspaper; and,
- Posted notification on the subject property.

The Planning Commission staff also prepares an hearing agenda and staff report for the public hearing. Copies of the staff report and agenda are available at the Planning Commission on the Monday prior to the public hearing date.

### **Step 6: Public Hearing**

The Planning Commission conducts a public hearing on the 2<sup>nd</sup> Tuesday of the each month at 7:30 p.m. at the Old Courthouse Building. The Applicant and/or his attorney must be present at the public hearing. If neither the applicant nor his attorney is present, then the zoning map amendment request will not be considered, and the applicant will be required to refile the application and repay all fees. The zone change public hearing is a quasi-judicial (evidentiary) hearing with both the applicant and any opposition being given the opportunity to present evidence, call witnesses, and cross-examine witnesses.

To obtain a zone change, the applicant has the responsibility of proving one of the following requirements as stated in Kentucky Revised Statute 100.213:

- That the proposed rezoning is in agreement with the adopted Comprehensive Plan;
- That the existing zoning classification given the property is inappropriate and that the proposed zoning classification is appropriate; or,
- That major changes of an economic, physical, or social nature within the area exist and were not anticipated in the adopted Comprehensive Plan and that the changes have substantially altered the basic character of the area.

At the hearing, the applicant or his attorney presents testimony, witnesses familiar with the neighborhood (i.e., property owners or residents) or expert witnesses (i.e., engineers, land surveyors, planners, or appraisers), and/or exhibits (i.e., maps, photographs, or written reports). Opponents and proponents also present their testimony, witnesses, and exhibits. Witnesses may be cross-examined, and the applicant and Planning Commission staff may be asked direct questions. Both the applicant and opposition may provide a summary of their arguments.

It is important to remember that it is the applicant's responsibility to provide information in support of their application. Use of the staff report is permitted but should not be the sole proof. It is also important to remember that the Planning Commission can consider only information presented at the public hearing in making its decision. Letters and signed petitions from persons not present at the meeting or not represented by an attorney may not be considered by the Planning Commission, since no questioning of the signees is possible.

Opponents may either be present or be represented by an attorney at the public hearing. It is recommended that a group of opponents designate representatives to speak on their behalf rather than have all opponents say the same thing repeatedly. It is much more effective for the group's representative to state for the record the number of their group in attendance at the hearing and then ask them to stand to show their opposition or support. Opponents shall limit their presentation and comments to the rezoning request.

### **Step 7: Planning Commission Meeting & Recommendation**

The Planning Commission meets on the 4<sup>th</sup> Tuesday of each month to consider the zone change request. No additional testimony or evidence may be presented at the Planning Commission meeting. The Planning Commission votes either to recommend approval or disapproval of the zone change request. Regardless of the decision, the Commission must give supporting reasons ("findings of fact") for its recommendation. A simple majority vote of all members present may recommend approval or disapproval of the zone change request.

### **Step 8: Legislative Final Action**

The Planning Commission transmits its recommendation to the appropriate legislative body, either one of the cities (Bardstown, Bloomfield, Fairfield or New Haven) or Nelson County Fiscal Court. The zone change requires two readings and publication of an ordinance before final approval or disapproval. The applicant is encouraged to attend the legislative body's meeting.

### **Step 9: Recordation of Land Use Certificate & Binding Elements**

If the legislative body approves the zone change request, the Planning Commission staff records a certificate of land use restriction and binding elements in the Nelson County Clerk's office.

**For more information, please contact:  
Joint City-County Planning Commission of Nelson County  
Old Courthouse Building, One Court Square, 2nd Floor  
P.O. Box 402  
Bardstown, Kentucky 40004  
Telephone: (502) 348-1805 Fax: (502) 348-1818  
Email: [ncpz@bardstowncable.net](mailto:ncpz@bardstowncable.net)**