

**12-759. Same; board of zoning appeals; membership; vacancies; powers; fees; variances; exceptions.** (a) Any governing body which has enacted a zoning ordinance or resolution shall create a board of zoning appeals by adoption of the appropriate ordinance or resolution. Such board shall consist of not less than three nor more than seven members. If a city enacts zoning regulations which affect land outside the corporate limits of such city, at least one member of the board shall be a resident of the area outside the city's limits. The members first appointed shall serve respectively for terms of one, two and three years, divided equally or as nearly equally as possible among the members. Thereafter the terms of the members may be changed to either three or four years, whichever is deemed to be in the best interest of the city or county. Vacancies shall be filled by appointment for the unexpired terms. The members of such board shall serve without compensation. The board annually shall elect one of its members as chairperson, and shall appoint a secretary who may be an officer or an employee of the city or county. The board shall adopt rules in accordance with the provisions of the ordinance or resolution creating the board. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the board, decisions of the board and the vote upon each question. Records of all official actions of the board shall be filed in its office and shall be a public record. The governing body, in the ordinance or resolution creating such board, may establish a scale of reasonable fees to be paid in advance by the party appealing. Any two or more cities or counties which have established a joint planning commission may establish a joint board of zoning appeals.

(b) Any board of zoning appeals in existence on the effective date of this act shall continue in existence, but shall be governed by the provisions of this act.

(c) The board of zoning appeals shall administer the details of appeals from or other matters referred to it regarding the application of the zoning ordinance or resolution as hereinafter provided. The board shall fix a reasonable time for the hearing of an appeal or any other matter referred to it. Notice of the time, place and subject of such hearing shall be published once in the official city newspaper in the case of a city and in the official county newspaper in the case of a county at least 20 days prior to the date fixed for hearing. A copy of the notice shall be mailed to each party to the appeal and to the appropriate planning commission.

(d) Appeals to the board of zoning appeals may be taken by any person aggrieved, or by any officer of the city, county or any governmental agency or body affected by any decision of the officer administering the provisions of the zoning ordinance or resolution. Such appeal shall be taken within a reasonable time as provided by the rules of the board, by filing a notice of appeal specifying the grounds thereof and the payment of the fee required therefor. The officer from whom the appeal is taken, when notified by the board or its agent, shall transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board shall have power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance or resolution. In exercising the foregoing powers, the board, in conformity with the provisions of this act, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit.

(e) When deemed necessary by the board of zoning appeals, the board may grant variances and exceptions from the zoning regulations on the basis and in the manner hereinafter provided: (1) To authorize in specific cases a variance from the specific terms of the regulations which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning regulations in such district. A request for a variance may be granted in such case, upon a finding by the board that all of the following conditions have been met: (A) That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant; (B) that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents; (C) that the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application; (D) that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and (E) that granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations; and (2) to grant exceptions to the provisions of the zoning regulation in those instances where the board is specifically authorized to grant such exceptions and only under the terms of the zoning regulation. In no event shall exceptions to the provisions of the zoning regulation be granted where the use or exception contemplated is not specifically listed as an exception in the zoning regulation. Further, under no conditions shall the board of zoning appeals have the power to grant an exception when conditions of this exception, as established in the zoning regulation by the governing body, are not found to be present.

(f) Any person, official or governmental agency dissatisfied with any order or determination of the board may bring an action in the district court of the county to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the board.

(g) A planning commission also may be designated as a board of zoning appeals under this section.

(h) The provisions of this section shall become effective on and after January 1, 1992.

**History:** L. 1991, ch. 56, § 20; July 1.