

19-2962. Same; board of zoning appeals; establishment; membership; meetings; powers; review of board decisions contrary to zoning regulations; judicial review. (a) Any zoning regulations adopted under this act shall provide for the establishment of a board of zoning appeals. The board of zoning appeals shall consist of not less than five nor more than nine members who shall be appointed by the board of county commissioners. All of the board's members shall be residents of the unincorporated area of the county.

The members first appointed by the board of county commissioners shall be appointed for terms of one, two and three years. The terms shall be divided equally or as nearly equally as possible between members. Thereafter members shall be appointed for terms of three years each. All members shall serve until their successors are appointed and qualified. Vacancies shall be filled by appointment by the board of county commissioners for the unexpired term. Members shall serve without compensation for their services but may receive such traveling expenses as the board of county commissioners authorizes which shall be paid from any funds available for such purpose. None of the members shall hold any other elected or appointed office or position in the county government except that one member shall be a member of the planning commission.

The board of zoning appeals shall annually elect one of its members as chairperson and one of its members as vice-chairperson. The board of county commissioners shall employ a secretary for the board of zoning appeals. The secretary shall keep a proper record of the board's proceedings. The board shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this act. Meetings of the board shall be held at the call of the chairperson, and at such other times as the zoning regulations adopted by the board of county commissioners may determine. A majority of the board shall constitute a quorum for the transaction of business.

The board of zoning appeals shall cause a proper record to be kept of its proceedings, showing the description of evidence presented, the findings of fact by the board, the decision of the board, and 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 filed in a public office designated by the board of county commissioners and shall be a public record.

(b) The board of zoning appeals shall hold a public hearing on any appeal or other matter referred to the board. Notice of such hearing shall be published at least one time in the official county newspaper at least 15 days prior to the hearing. Such notice shall include the time, place, date and subject of the hearing as well as notice to the parties in interest. Failure to receive individual notice shall not invalidate any subsequent action taken. Upon the hearing any party may appear in person or by agent or by attorney. The board shall have the power to:

(1) 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 any regulations adopted pursuant to the zoning powers herein granted. Appeals to the board may be taken by any person aggrieved, or by any officer, department, board or bureau of the county, or any governmental agency or body affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the zoning regulations, by filing with the board of zoning appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken, when notified by the board of zoning appeals or its agent, shall transmit to the board all the papers constituting the record upon which the action appealed from was taken, within the time period established by the rules of the board.

(2) Authorize in specific cases a variance from the specific terms of the zoning regulations which will not be contrary to the public interest where, due to special conditions, a literal enforcement of provisions of the regulations will, in an individual case, result in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done. The board of zoning appeals shall not have the power to grant variances regarding uses permitted within zoning districts, but shall be limited to granting variances on matters including, but not limited to, building height, setbacks, lot size and lot dimensions, as provided by the zoning regulations. A request for a variance may be granted in such individual case, upon a finding by the board of zoning appeals that all of the following conditions have been met: (A) The variance requested arises from such condition which is unique and which is not ordinarily found in the same zoning classification, and is created by the zoning regulations and not by an action or actions of the property owner or the applicant; (B) the granting of the variance will not adversely affect the rights of adjacent property owners or residents; (C) 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) the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; and (E) granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.

In exercising such powers, the board of zoning appeals, 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 administrative official from whom the appeal is taken. The board of zoning appeals shall render its decision within 10 days of the conclusion of the hearing.

Any decision of the board of zoning appeals which is contrary to existing zoning regulations shall not be effective until approved by the board of county commissioners. Such decision and the record thereon shall be submitted to the board of county commissioners within two weeks of such decision and the board of county commissioners, within two weeks after receipt thereof, shall approve the decision of the board of zoning appeals or shall call for a public hearing before the board of county commissioners for the purpose of reviewing and reconsidering such decision. The failure of the board of county commissioners to act within the two-week period shall constitute approval of the decision of the board of zoning appeals. The public hearing shall be called by following the same notice requirements specified for public hearings on matters before the board of zoning appeals. The failure by parties in interest to receive individual notice shall not invalidate any subsequent action taken. At such hearing any party may appear in person or by agent or by attorney.

The board of county commissioners, in reconsidering a decision of the board of zoning appeals, shall cause a proper record to be kept of its proceedings, showing the description of evidence presented, the findings of fact by the board, the decision of the board, and 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 filed in a public office designated by the board of county commissioners and shall be a public record.

In reconsidering a decision of the board of zoning appeals, the board of county commissioners, after conducting the public hearing specified herein and within a reasonable time, shall approve, modify and approve, or overturn the

decision of the board of zoning appeals.

Any person, official or governmental agency dissatisfied with any order or determination of the board of zoning appeals or the board of county commissioners may bring an action in the district court of the county to determine the reasonableness of any such order or determination.

(c) The board of county commissioners may establish a scale of reasonable fees to be paid in advance by the owner of any property at the time of making application for an appeal or variance.

History: L. 1984, ch. 96, § 7; May 3.