

9-462.06. Board of adjustment

A. The legislative body, by ordinance, shall establish a board of adjustment, which shall consist of at least five but no more than seven members appointed by the legislative body in accordance with provisions of the ordinance, except that the ordinance may establish the legislative body as the board of adjustment. The legislative body may, by ordinance, delegate to a hearing officer the authority to hear and decide on matters within the jurisdiction of the board of adjustment as provided by this section, except that the right of appeal from the decision of a hearing officer to the board of adjustment shall be preserved.

B. The ordinance shall provide for public meetings of the board, for a chairperson with the power to administer oaths and take evidence, and that minutes of its proceedings showing the vote of each member and records of its examinations and other official actions be filed in the office of the board as a public record.

C. A board of adjustment shall hear and decide appeals from the decisions of the zoning administrator, shall exercise other powers as may be granted by the ordinance and adopt all rules and procedures necessary or convenient for the conduct of its business.

D. Appeals to the board of adjustment may be taken by persons aggrieved or by any officer, department, board or bureau of the municipality affected by a decision of the zoning administrator, within a reasonable time, by filing with the zoning administrator and with the board a notice of appeal specifying the grounds of the appeal. The zoning administrator shall immediately transmit all records pertaining to the action appealed from to the board.

E. An appeal to the board stays all proceedings in the matter appealed from, unless the zoning administrator certifies to the board that, in the zoning administrator's opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. On the certification proceedings shall not be stayed, except by restraining order granted by the board or by a court of record on application and notice to the zoning administrator. Proceedings shall not be stayed if the appeal requests relief that has previously been denied by the board except pursuant to a special action in superior court as provided in subsection K of this section.

F. The board shall fix a reasonable time for hearing the appeal, and shall give notice of hearing by both publication in a newspaper of general circulation in accordance with section 9-462.04 and posting the notice in conspicuous places close to the property affected.

G. A board of adjustment shall:

1. Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance adopted pursuant to this article.

2. Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located.

3. Reverse or affirm, in whole or in part, or modify the order, requirement or decision of the zoning administrator appealed from, and make the order, requirement, decision or determination as necessary.

H. A board of adjustment may not:

1. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.

2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

I. If the legislative body is established as the board of adjustment, it shall exercise all of the functions and duties of the board of adjustment in the same manner and to the same effect as provided in this section.

J. In a municipality with a population of more than one hundred thousand persons, the legislative body, by ordinance, may provide that a person aggrieved by a decision of the board or a taxpayer who owns or leases the adjacent property or a property within three hundred feet from the boundary of the immediately adjacent property, an officer or a department of the municipality affected by a decision of the board, at any time within fifteen days after the board has rendered its decision, may file an appeal with the clerk of the legislative body. The legislative body shall hear the appeal in accordance with procedures adopted by the legislative body and may affirm or reverse, in whole or in part, or modify the board's decision.

K. A person aggrieved by a decision of the legislative body or board or a taxpayer who owns or leases the adjacent property or a property within three hundred feet from the boundary of the immediately adjacent property, an officer or a department of the municipality affected by a decision of the legislative body or board, at any time within thirty days after the board, or the legislative body, if the board decision was appealed pursuant to subsection J of this section, has rendered its decision, may file a complaint for special action in the superior court to review the legislative body or board decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing may affirm or reverse, in whole or in part, or modify the decision reviewed.