

## BOARD OF ADJUSTMENT

### § 156.135 CREATION.

(A) (1) A Zoning Board of Adjustment is hereby established.

(2) The Board shall consist of five **town residents** to be appointed by the Town Council **and one ETJ resident to be appointed by the Alleghany County Commissioners**, for the overlapping terms of three years. Initial appointments shall be as follows: one member for a term of three years; two members for a term of two years; and two members for a term of one year. Thereafter, as the terms expire, all new appointments shall be for three-year terms. **each serves a three-year term. Appointment to the board by the Alleghany County Board of Commissioners is granted by state law. The one regular member appointed by the Alleghany County Commissioners shall be a resident of the defined extraterritorial jurisdiction outside the corporate limits of the town**

(3) **The number of members representing the extraterritorial jurisdiction must be at least proportional to the number representing the Town of Sparta, as mandated by state law. Minimum extraterritorial jurisdiction representation is calculated by dividing the combined population of the town and extraterritorial jurisdiction by the number of Board of Adjustment members to find the required per capita representation. According to the full-fraction rule in state law, additional extraterritorial representatives are needed when the ETJ population equals the number of residents represented by a town Board member.**

(4) Nothing herein contained shall be interpreted as to forbid **forbidding** any member from being appointed to succeed himself or herself.

(5) Members shall serve without pay, but may be reimbursed for any expenses incurred while representing the Board of Adjustment.

(B) Vacancies occurring for any reason other than expiration of term shall be filled as soon as is reasonably possible after the vacancy occurs by the proper board making the appointment, and the appointment shall only be for the period of the unexpired term. Members may be removed for cause by the appointing board upon written charges and after a public hearing.

(C) (1) Two alternate members shall be appointed. **One of the alternate members (Alternate #1) shall be appointed by the Town Council. One of the alternate members (Alternate #2) shall be appointed by the Alleghany County Board of Commissioners under the authority granted by state law. The alternate member (Alternate #2) appointed by the Alleghany County Commissioners shall be a resident of the extraterritorial jurisdiction within a one-mile area outside the corporate limits of the town.**

~~(2) They shall have no official functions unless they are needed to give the Board a quorum in the absence of official Board of Adjustment members.~~

~~(3) Alternate members shall have a term of three years.~~

**2) Each alternate member, when attending a Board meeting in place of a regular member, shall have and exercise all the same powers and duties as a regular**

**member. Alternate members are only permitted to serve for a regular member assigned to the town or extraterritorial jurisdiction as the alternate.**

**3) Alternate members may join discussions or proceedings but may only vote if a regular member is absent or disqualified. Their participation does not count as an increase in the size of the Boards. Voting should not be postponed to allow a regular member to vote instead of an alternate. If a decision is needed on which alternate should vote, Alternate #1 shall cast the vote.**

**4) No regular or alternate members shall be permitted to participate in any matter in which they have either directly or indirectly any personal or financial interest.**

(Ord. passed - -)

### **§ 156.136 PROCEEDINGS.**

The Board of Adjustment shall elect a chairman and a vice-chairman from its members who shall serve for one year. **Only town residents of the Board are eligible to be elected and serve as the Chairman and Vice Chair, with eligibility for re-election. The town Board members shall engage in all matters that arise, regardless of their location within the town or extraterritorial jurisdiction, unless they are disqualified due to a conflict of interest. The extraterritorial (ETJ) members shall only have equal rights, privileges, and duties with town members of the Board for matters at issue that arise within the extraterritorial jurisdiction.** ~~or until reelected or until their successors are elected. The Board shall appoint a secretary who may be a municipal officer, and employee of the county, or a member of the Planning and Zoning Board. The Board shall adopt rules and bylaws in accordance with the provisions of this Chapter. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his **their** absence, the vice-chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the Board shall be open to the public. **The Board shall establish regulations for conducting its affairs and shall maintain a record of its members' attendance, resolutions, discussions, findings, and recommendations, which shall be accessible as a public record. The Board shall convene at least one meeting per month, and all such meetings shall be open to the public.**~~

(Ord. passed - -)

### **§ 156.137 DECISIONS.**

The concurring vote of four members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to ~~effect~~ **affect** any variation of this chapter. On all appeals, applications, and other ~~matters~~ **issues** brought before the Board of Adjustment, the Board shall inform in writing all the parties involved of its decisions and the reasons therefore.

(Ord. passed - -)

### **§ 156.138 APPEALS; HEARING AND NOTICE.**

(A) ~~An appeal to the Board may be taken by any person, firm, or corporation aggrieved, or by any town officer, department, board, or agency affected by any decision of the Zoning Enforcement Officer or other town official based in whole or in part upon the provisions of this subchapter. Such appeal shall be taken within such time as shall be prescribed by the Board by general rule by filing with the Zoning Enforcement Officer a notice of appeal and specifying the grounds thereof. The Zoning Enforcement Officer shall forthwith transmit to the Board all the papers constituting a record upon which the action appealed from was taken.~~

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~~(B) The Board of Adjustment shall fix a reasonable time for the hearing of appeals or other matters referred to it, and give due notice thereof to the parties in interest, and decide the same within a reasonable time. Upon a hearing, any party may appeal in person, by agent, or by attorney.~~

***(B) The Board of Adjustment shall establish a reasonable timeframe for the hearing of appeals or other matters referred to it, provide appropriate notice to the interested parties, and render a decision within a reasonable period. During the hearing, any party may appear in person, through an agent, or by counsel.***

(Ord. passed - -)

## **§ 156.139 STAY OF PROCEEDINGS.**

~~An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Zoning Enforcement Officer and on due cause shown.~~  
***An appeal suspends all legal proceedings concerning the case in question, unless the Zoning Enforcement Officer certifies to the Board of Adjustment that, due to facts specified in the certification, a stay would pose an imminent threat to life and property. In such cases, proceedings shall not be stayed except by a restraining order issued by the Board of Adjustment or a court of record upon application, with notice to the Zoning Enforcement Officer and upon demonstration of cause.***

(Ord. passed - -)