

**ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS**

**CATEGORY:**  
Committees/Boards/Commissions/Examiners

**CODE NUMBER:**  
AC-2-18

**TITLE:**  
Guidelines for Lee County Board of Adjustment and Appeals

**ADOPTED:**  
03/23/94

**AMENDED:**  
07/12/95; 08/09/05; 08/21/18

**ORIGINATING DEPARTMENT:**  
County Attorney

**PURPOSE/SCOPE:**

To provide rules of Procedure for the Board of Adjustment and Appeals.

**POLICY/PROCEDURE:**

**SECTION I: PURPOSE**

The purpose of this Board is to hear and decide appeals from decisions of the Building Official, Fire Official, Lee County Flood Insurance Coordinator ("Coordinator") or their designees, on any of the various standard codes regulated and enforced by Lee County except for the Plumbing Code and Mechanical Code.

**SECTION II: GOVERNING RULES**

Except as otherwise provided, all meetings of the Board of Adjustment and Appeals will be governed by Robert's Rule of Order.

**SECTION III: MEMBERSHIP**

The Board of Adjustment and Appeals will consist of thirteen (13) members. One person representing each of the following categories will be appointed by the Board of County Commissioners to serve on the Board of Adjustment and Appeals: Architect or Engineer; General Contractor; Electrical Contractor; Mechanical Contractor; Residential or Building Contractor; Aluminum Contractor; Solar Contractor; Roofing Contractor; Sign or Outdoor Advertising Contractor; Mobile Home Installer; representative of fire service; and representative of handicapped persons. Appointments will be for a term of four (4) years to commence as stated in the Board of Adjustment and Appeals ordinance. Vacancies will be filled by appointment for the unexpired term. The unexcused absence of any member for three (3) consecutive meetings will be construed as a voluntary resignation and a new member will be appointed.

**SECTION IV: QUORUM**

Seven (7) members of the Board will constitute a quorum. A motion of the Board will be deemed adopted only if the motion is presented to a quorum and receives an affirmative vote from the majority of members present. An affirmative majority vote must consist of at least four (4) affirmative votes.

**SECTION V: BOARD COUNSEL**

The Lee County Attorney's Office will assist the Board with respect to any legal issues that may arise affecting Board decisions and prepare a draft order based upon the Board's decision regarding the issue presented in each case.

## **SECTION VI: INITIATING PROCEEDINGS BEFORE THE BOARD OF ADJUSTMENT AND APPEALS**

1. A decision of the Building Official, Fire Official, Coordinator or their designees may be appealed to the Board of Adjustment and Appeals by the filing of a written Notice of Appeal with the Department of Community Development/Building Department within thirty (30) days, or less if so indicated by the Building Official's decision, after the date such decision is rendered.
2. The Notice of Appeal must be on the form prescribed by the Department of Community Development/Building Department and accompanied by the appropriate fee as set out in the Administrative Code.
3. The Notice must indicate the following:
  - a. The address/location of the subject property;
  - b. The name and mailing address of the owner of the subject property;
  - c. The name of the person filing the Notice of Appeal;
  - d. The person who will represent the owner before the Board;
  - e. The name and title of the person who reviewed the plan and whose decision is being appealed;
  - f. A specific citation to the code, section or ordinance being appealed;
  - g. A brief explanation as to the reason for the appeal and the basis for any variance being requested.
4. Twenty (20) copies of the Notice of appeal, as well as any exhibits attached thereto, must be provided at the time the Notice is filed.
5. In the event sealed plans/drawings accompany the Notice, the engineer/architect whose seal appears on those plans must be present at the Board hearing.
6. Prior to hearing by the Board, staff will prepare a written memorandum concerning the appeal which must include the following:
  - a. The action the applicant suggested which was denied by the Building Official, Fire Official or Coordinator and the reason for the denial. Relevant regulations should be cited with copies attached to the memorandum.
  - b. Staff's recommendation to the Board with respect to the ramifications of granting or denying a variance or modification as to the relevant code provisions. This should also encompass any conditions which may reasonably be imposed in the event the variance is granted.
7. Once the Notice of Appeal has been filed, it will be heard by the Board within fifteen (15) days thereafter, unless good cause for the delay can be shown.

## **SECTION VII: RECORD OF PROCEEDINGS**

1. The Building Official, or his designee, will act as an ex officio secretary of the Board and will keep a written record of all Board proceedings which will include:
  - a. A copy of the application and any exhibits presented to the Board;
  - b. A statement as to the issues before the Board;

- c. The Board's decision with regard to the issues and the reasons therefor;
  - d. A record of the members in attendance, including whether any member was excused by the Chairman;
  - e. A copy of any order which results from Board action.
2. The County will record all meetings of the Board of Adjustment and Appeals in order to preserve a detailed record of the proceedings. The official record of these proceedings will consist of the recording along with any written/printed documentation considered by the Board.

**SECTION VIII: POWER OF BOARD OF ADJUSTMENT AND APPEALS**

1. Variation or Modification of Specific Code Section:

Based upon the information presented at the hearing, the Board can vote to vary the application of a particular code, section or ordinance when, in its opinion, it is appropriate to do so. The order granting the variance or modification must state with specificity the reason for the decision and any conditions placed upon same.

2. Decisions:

a. A decision will be reached by the Board of Adjustment and Appeals without unreasonable or unnecessary delay.

b. All decisions of the Board must be rendered as a written order signed and attested to by the Chairman of the Board. The order must set forth the grounds for appeal, the facts relied upon by the Board, and the Board's decision regarding the issues.

c. All orders of the Board are deemed final, subject to any remedy the aggrieved party may have in law or equity.

d. Once the decision of the Board of Adjustment and Appeals has become final, the appropriate official must immediately take any required action in accordance with the decision.

**SECTION IX: APPEAL OF A BOARD OF ADJUSTMENT AND APPEALS DECISION**

Any aggrieved person may obtain judicial review of a final decision of the Board of Adjustment and Appeals by filing a Petition for Writ of Certiorari in Circuit Court. Such Petition must be filed within thirty (30) calendar days after the Board of Adjustment and Appeals decision is rendered pursuant to Florida Rules of Appellate Procedure. The original Petition for Writ of Certiorari must be filed with the Clerk of the Circuit Court. Copies of the Petition must be filed with the Department of Community Development/Building Department for forwarding to the County Attorney's Office.