

CHAPTER 13**AIRPORT ZONING****§241. Regulations**

Every political subdivision may adopt, administer and enforce, under the police power and in the manner and upon the conditions prescribed, airport zoning regulations, which regulations shall divide the area surrounding any airport within the jurisdiction of said political subdivision into zones and within such zones specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow. In adopting or revising any such zoning regulations, the political subdivision shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, the possibility of lowering or removing existing obstructions and the views of the agency of the Federal Government charged with the fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the airport.

In the event that a political subdivision has adopted, or hereafter adopts, a general zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations adopted for the same area or portion thereof under this chapter may be incorporated in and made a part of such general zoning regulations, and be administered and enforced in connection therewith, but such general zoning regulations shall not limit the effectiveness or scope of the regulations adopted under this chapter.

Any 2 or more political subdivisions may agree, by ordinance duly adopted, to create a joint board and delegate to that board the powers to promulgate, administer and enforce airport zoning regulations to protect the aerial approaches of any airport located within the corporate limits of any one or more of those political subdivisions. Such joint boards must have as members 2 representatives appointed by the chief executive officers of each political subdivision participating in the creation of the board and a chair elected by a majority of the members so appointed. [RR 2023, c. 1, Pt. C, §36 (COR).]

The jurisdiction of each political subdivision is extended to promulgation, administration and enforcement of airport zoning regulations to protect the approaches of any airport which is owned by said political subdivision but located outside the corporate limits of said political subdivision. In case of conflict with any airport zoning or other regulations promulgated by any other political subdivision, the regulations adopted pursuant to this section shall prevail.

All airport zoning regulations adopted under this chapter shall be reasonable and none shall require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in section 242, subsection 1.

SECTION HISTORY

RR 2023, c. 1, Pt. C, §36 (COR).

§242. Permits and variances

1. Permits. Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to this chapter, a system may be established by any political subdivision for the granting of permits to establish or construct new structures and other uses and to replace existing structures and other uses or make substantial changes therein or substantial repairs thereof. In any event, before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No such permit shall be granted that would allow the structure or tree in question to be made higher or become a greater hazard to air

navigation than it was when the applicable regulation was adopted. Whenever the administrative agency determines that a nonconforming structure or tree has been abandoned or more than 80% torn down, destroyed, deteriorated or decayed:

A. No permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations; and

B. Whether application is made for a permit under this subsection or not, the said agency may by appropriate action compel the owner of the nonconforming structure or tree, at its own expense, to lower, remove, reconstruct or equip such object as may be necessary to conform to the regulations or, if the owner of the nonconforming structure or tree shall neglect or refuse to comply with such order for 10 days after notice, the said agency may proceed to have the object so lowered, removed, reconstructed or equipped and assess the cost and expense upon the object or the land whereon it is or was located. Unless such an assessment is paid within 90 days from the service of notice on the agent or owner of such object or land, the sum shall bear interest at the rate of 10% per year until paid, and shall be collected in the same manner as are general taxes. Except as indicated, all applications for permits for replacement, change or repair of nonconforming uses shall be granted.

2. Variances. Any person desiring to erect any structures, increase the height of any structure, permit the growth of any tree or otherwise use the person's property in violation of airport zoning regulations adopted under this chapter may apply to the board of appeals, as provided in section 243, subsection 3, for a variance from the zoning regulations in question. Such variances must be allowed when a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and of this chapter. [RR 2023, c. 1, Pt. C, §37 (COR).]

3. Obstruction marking and lighting. In granting any permit or variance under this section, the administrative agency or board of appeals may, if it deems such action advisable to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate and maintain suitable obstruction markers and obstruction lights thereon.

SECTION HISTORY

RR 2023, c. 1, Pt. C, §37 (COR).

§243. Procedure

1. Adoption of zoning regulations. No airport zoning regulations shall be adopted, amended or changed under this chapter, except by action of the legislative body of the political subdivision in question, or the joint board provided for in section 241, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the hearing shall be published in a newspaper of general circulation, in the political subdivision or subdivisions in which the airport is located.

[PL 1987, c. 667, §4 (AMD).]

2. Administration of zoning regulations; administrative agency. The legislative body of any political subdivision adopting airport zoning regulations under this chapter may delegate the duty of administering and enforcing such regulations to any administrative agency under its jurisdiction, or may create a new administrative agency to perform such duty, but such administrative agency shall not be or include any member of the board of appeals. The duties of such administrative agency shall include that of hearing and deciding all permits under section 242, subsection 1, but such agency shall not have or exercise any of the powers delegated to the board of appeals.

3. Administration of airport zoning regulations; board of appeals. Airport zoning regulations adopted under this chapter shall provide for a board of appeals to have and exercise the following powers:

- A. To hear and decide appeals from any order, requirement, decision or determination made by the administrative agency in the enforcement of this chapter or of any ordinance adopted pursuant thereto;
- B. To hear and decide special exceptions to the terms of the ordinance upon which such board may be required to pass under such ordinance;
- C. To hear and decide specific variances under section 242, subsection 2. When a zoning board of appeals or adjustment already exists, it must be appointed as the board of appeals. Otherwise, the board of appeals consists of 5 members, each to be appointed for a term of 3 years and to be removable for cause by the appointing authority upon written charges and after public hearing. In the first instance one member must be appointed for a term of 3 years, 2 for a term of 2 years and 2 for a term of one year. After the initial appointments, each member appointed serves for a term of 3 years or until the member's successor is duly appointed and qualified. [RR 2023, c. 1, Pt. C, §38 (COR).]

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application and on notice to the agency from which the appeal is taken and on due cause shown.

The board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest and decide the same within a reasonable time. At the hearing any party may appear in person or by agent or by attorney.

The board may, in conformity with this chapter, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

The board shall adopt rules in accordance with any ordinance adopted under this chapter. Meetings of the board must be held at the call of the chair and at such other times as the board may determine. The chair, or in the chair's absence the acting chair, may administer oaths and compel the attendance of witnesses. All meetings of the board are public. The board shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact, and shall keep records of its examination and other official actions, all of which must immediately be filed in the office of the board and are a public record.

Appeals to the board may be taken by any person aggrieved, or by any officer, department, board or bureau of the political subdivision affected by any decision of the administrative agency. An appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

The concurring vote of a majority of the members of the board shall be sufficient to reverse any order, requirement, decision or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

[RR 2023, c. 1, Pt. C, §§38, 39 (COR).]

SECTION HISTORY

PL 1987, c. 667, §4 (AMD). RR 2023, c. 1, Pt. C, §§38, 39 (COR).

§244. Appeals

Any person aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the political subdivision may appeal to the Superior Court in the manner provided for appeal on the determination of damages for town ways in Title 23, section 3029. [PL 2023, c. 646, Pt. A, §10 (AMD).]

Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith or with malice in making the decision appealed from.

SECTION HISTORY

PL 2023, c. 646, Pt. A, §10 (AMD).

§245. Enforcement and remedies

Each violation of this chapter or of any regulation, order or ruling promulgated or made pursuant to this chapter is a Class E crime, and each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision within which the property is located may institute in any court of competent jurisdiction an action to prevent, restrain, correct or abate any violation of this chapter or of airport zoning regulations adopted under this chapter or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction, which may be mandatory or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this chapter and of the regulations adopted, and orders and rulings made pursuant thereto. [PL 1977, c. 696, §52 (AMD).]

SECTION HISTORY

PL 1977, c. 696, §52 (AMD).

§246. Acquisition of air rights

In any case in which:

1. Nonconforming use. It is desired to remove, lower or otherwise terminate a nonconforming use; or

2. Approach protection. The approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or

3. Acquisition of property rights. It appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations; the political subdivision within which the property or nonconforming use is located, or the political subdivision owning the airport or served by it, may acquire by purchase, grant or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such an air right, easement or other estate or interest in the property or nonconforming use in question as may be necessary to effectuate the purpose of this chapter.

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