

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

APPROVED—The 25th day of August, A. D. 1959.

DAVID L. LAWRENCE

No. 267

AN ACT

Amending the act of May 4, 1927 (P. L. 519), entitled "An act concerning boroughs, and revising, amending, and consolidating the law relating to boroughs," providing that the zoning board of adjustment must give their decision within forty-five days.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

The Borough Code.

Section 1. Section 3307, act of May 4, 1927 (P. L. 519), known as "The Borough Code," reenacted and amended July 10, 1947 (P. L. 1621), is amended to read:

Section 3307, act of May 4, 1927, P. L. 519, reenacted and amended July 10, 1947, P. L. 1621, further amended.

Section 3307. Board of Adjustment.—(a) The council may appoint a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this article may provide that said board of adjustment may in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

(b) The board of adjustment shall consist of three members, one of whom shall be designated to serve until the first day of January following the adoption of the zoning ordinance, one until the first day of the second January thereafter, and one until the first day of the third January thereafter. Their successors shall be appointed on the expiration of their respective terms, to serve three years. The members of the board shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(c) The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this article. Meetings of the board shall be held at the call of the chairman, and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All

meetings of the board shall be open to the 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 such fact, and shall keep records of its examinations and other official action, all of which shall be immediately filed in the office of the board and shall be a public record.

(d) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer of the borough affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(e) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken 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 officer from whom the appeal is taken and due cause shown.

(f) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within [a reasonable time] *forty-five days after the hearing or if said hearing is continued, within forty-five days after said continued hearing. If the board of adjustment does not make a decision within forty-five days after the hearing or continued hearing, it shall be deemed that such board has decided in favor of the person or the officer of the borough aggrieved or affected who is seeking relief.* Upon the hearing, any party may appear in person or by agent or by attorney.

(g) The board of adjustment shall have the following powers:

(1) To 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 this article or of any ordinance adopted pursuant thereto.

(2) To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

(3) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

(h) In exercising the above mentioned powers, such board may in conformity with the provisions of this article reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as in its opinion ought to be made. Notice of such decision shall forthwith be given to all parties in interest.

(i) Any person aggrieved by any decision of the board of adjustment, or any taxpayer or any officer of the borough, may within thirty days after such decision of the board appeal to the court of common pleas of the county by petition, duly verified, setting forth that such decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and specifying the grounds upon which he relies.

(j) Upon presentation of the petition in proper form, the court shall forthwith issue a writ of certiorari directed to the board of adjustment commanding it within twenty (20) days after the service thereof to certify to the court under the certificate of its chairman, its entire record in the matter in which the appeal has been taken. The prothonotary shall serve the board of adjustment by registered mail with a copy of the writ and a copy of the appeal petition. On or before the return day of the writ the board of adjustment shall file the entire record with the writ in the office of the prothonotary.

(k) Any time during the pendency of an appeal, upon application of the appellant and upon due notice to the board of adjustment, the court, or a judge thereof, may after hearing grant an order of supersedeas upon such terms and conditions, including the filing of security, as the court or the judge thereof may prescribe.

(l) If upon the hearing of the appeal it shall appear to the court that testimony is necessary for the proper disposition of the appeal, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court, with his findings of facts and conclusions of law. The court may reverse, or affirm, in whole or in part, or may modify the decision appealed from as to it may appear just and proper.

(m) Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross

negligence or in bad faith or with malice in making the decision appealed from.

APPROVED—The 25th day of August, A. D. 1959.

DAVID L. LAWRENCE

No. 268

AN ACT

Amending the act of June 24, 1931 (P. L. 1206), entitled "An act concerning townships of the first class; amending, revising, consolidating and changing the law relating thereto," providing that the zoning board of adjustment must give their decision within forty-five days.

The First Class
Township Code.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 3107, act of June 24, 1931, P. L. 1206, reenacted and amended May 27, 1949, P. L. 1955, further amended.

Section 1. Section 3107, act of June 24, 1931 (P. L. 1206), known as "The First Class Township Code," reenacted and amended May 27, 1949 (P. L. 1955), is amended to read:

Section 3107. Board of Adjustment.—(a) Such board of township commissioners may appoint a board of adjustment, and, in the regulations and restrictions adopted pursuant to the authority of this article, may provide that said board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

(b) The board of adjustment shall consist of three members, one of whom shall be designated to serve until the first day of January following the adoption of the zoning ordinance, one until the first day of the second January thereafter, and one until the first day of the third January thereafter. Their successors shall be appointed on the expiration of their respective terms, to serve three years. The members of the board shall be removable for cause, by the appointing authority, upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(c) The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this article. Meetings of the board shall be held at the call of the chairman, and at such other times as the board may determine. Such chairman or, in his absence, the acting chairman may administer oaths, and