

**STATE OF TENNESSEE**  
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Opinion No. 10-108

Zoning Appeals by County Legislative Body under Tenn. Code Ann. § 13-7-108

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**QUESTIONS**

1. Does Tenn. Code Ann. § 13-7-108 allow the legislative body of a county to apply to the board of zoning appeals for a special use exception on behalf of a private property owner?
2. Does Tenn. Code Ann. § 13-7-108 allow the legislative body of a county to challenge a board of zoning appeal's denial of a private property owner's application for a special use exception?

**OPINION**

1. No. Tenn. Code Ann. § 13-7-108 only describes who may appeal to the board of zoning appeals. The statute does not address who may apply to the board of zoning appeals for a special use exception permit. In general, the owner of the property is the proper party to apply for a special use exception.
2. A county legislative body may challenge in court a decision by a board of zoning appeals, but only if the county legislative body can demonstrate that the denial of the special use exemption has interfered with the local government's ability to meet its statutory obligations or there exists some substantial, direct, and adverse effects on the local government in its corporate capacity as a result of the denial.

**ANALYSIS**

Local governments lack inherent power to control the use of private property within their boundaries. *See 421 Corp. v. Metropolitan Gov't of Nashville & Davidson County*, 36 S.W.3d 469, 475 (Tenn. Ct. App. 2000). Their power derives from the State through specific delegation by the General Assembly. *See id.* (citing *State ex rel. SCA Chem. Servs. v. Sanidas*, 681 S.W.2d 557, 562 (Tenn. Ct. App. 1984) and *Family Golf of Nashville, Inc. v. Metropolitan Gov't*, 964 S.W.2d 254, 257 (Tenn. Ct. App. 1997)). Local governments must exercise their delegated authority consistently with the delegation statutes from which they derive their power. *See id.* (citing *Henry v. White*, 250 S.W.2d 70, 71 (Tenn. 1952)).

Under Tenn. Code Ann. § 13-7-101, *et seq.*, the General Assembly has expressly delegated the authority to county legislative bodies to enact zoning regulations and create a board of zoning appeals. A county legislative body may create its own general rules governing the operations, procedures, and jurisdiction of the board of zoning appeals, as long as the rules do not conflict with the provisions of Tenn. Code Ann. § 13-7-101, *et seq.* Tenn. Code Ann. § 13-7-107(a). A board of zoning appeals has the power to hear and decide requests for special exceptions. Tenn. Code Ann. § 13-7-109(2).

The first question is whether Tenn. Code Ann. § 13-7-108 allows a county legislative body to apply to the board of zoning appeals for a special use exception on behalf of a private property owner. The statute provides:

Appeals to the board of appeals may be taken by any person aggrieved, or by any officer, department or board of the county affected, by any grant or withholding of a building permit or by any other decision of a building commissioner or other administrative official, based in whole or in part upon the provisions of any ordinance under this part.

Tenn. Code Ann. § 13-7-108.

By enacting Tenn. Code Ann. § 13-7-108, the General Assembly has clearly limited who may *appeal* an administrative decision to the board of zoning appeals. However, the statute does not address who may *apply* for a special use exception. This office is not aware of any state statutes or regulations that permit a county legislative body to apply for a special use exception on behalf of a private property owner. It is generally accepted that the owner of property is the proper party to apply for a special use exception. Since a county local governing body operating under the authority of Tenn. Code Ann. § 13-7-107(a) may enact rules governing the operations, procedures, and jurisdiction of its local board of zoning appeals, further review of a particular governing body's zoning ordinances may provide some additional guidance regarding the specific application procedures for that county.

The second question is whether Tenn. Code Ann. § 13-7-108 provides standing for a county local governing body to challenge the board of zoning appeals' decision to deny a private landowner's application for a special use exception.

As indicated above, Tenn. Code Ann. § 13-7-108 allows any county officer, department or board "affected" by an administrative decision to appeal that decision to the board of zoning appeals. And once having done so, the county officer, like any person who is dissatisfied with the outcome of an administrative hearing, may take the matter to a court for further review. Clearly, this would include the opportunity to appeal the board's denial of a request for special use exception. The statutes set out that anyone who is "aggrieved" by a final order of a board may have the board's final order reviewed by the courts. Tenn. Code Ann. § 27-9-101. A petition for certiorari must be filed with the court within sixty days from entry of the board's final order. Tenn. Code Ann. § 27-9-102.

The provisions of Tenn. Code Ann. § 13-7-108 and § 27-9-101 do not provide definitions for the terms “aggrieved” or “affected,” although in this particular context it can be presumed that the two words have similar meanings. As a practical matter, the Tennessee Court of Appeals explains:

It stands to reason that the scope of the statute defining who may appeal to the board should be the same as the scope of the statute defining who may seek judicial review of a board's decision. After all, persons authorized to appeal to the Board from an adverse decision by the zoning administrator should likewise be authorized to seek judicial review if the Board's decision is not to their liking. Any other conclusion would create an anomalous situation where some persons appealing to the Board would be entitled to judicial review while others would not.

*City of Brentwood v. Metropolitan Bd. of Zoning Appeals*, 149 S.W.3d 49, 57 (Tenn. Ct. App. 2004).

What constitutes “aggrievement” in land use cases is demonstration of a distinct and palpable injury or impairment. *Id.* at 58. In general, to be “aggrieved” a party must be able to show a special interest in the agency’s final decision or demonstrate it is the subject of injury not common with that of the general public. *Wood v. Metropolitan Nashville & Davidson County Government*, 196 S.W.3d 152, 158 (Tenn. Ct. App. 2005).

As applied to local governments, “aggrievement” includes interference with the government’s ability to meet its statutory obligations or some substantial, direct, and adverse effects on the local government in its corporate capacity. *City of Brentwood*, 149 S.W.3d at 58. Examples in which the courts have found “aggrievement” in land use cases include those where the local government’s decision results in a reduction in local government revenues or depreciation in value of the local government’s property, interference with the ability of local government to provide police or fire protection, or general impairment to the health, safety or welfare of local residents. *Id.* Thus, while Tenn. Code Ann. § 13-7-108 and § 27-9-101 do provide a local governing body with the means of appeal from a decision of the board of zoning appeals, the statutes require the local governing body to demonstrate that some cognizable interest is being affected by the board of zoning appeals’ denial of a private property owner’s application for a special use exception.

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