

**RULES AND
REGULATIONS
OF
THE CLEVELAND BOARD
OF ZONING APPEALS
(Revised 3-21-11)**

I. BOARD OF ZONING APPEALS

“The Board” as referred to in these Rules and Regulations means the Board of Zoning Appeals provided for in the City of Cleveland’s Charter and in Chapter 329 of the Codified Ordinances of the City of Cleveland (hereinafter “the Ordinances”). These Rules and Regulations are adopted, after proper notice and public hearing, under the authority of Section 329.02(b) of the Ordinances as necessary to carry into effect the provisions of the zoning code and to exercise the powers and jurisdiction the Charter and Ordinances confer on the Board.

II. ORGANIZATION

The organization of the Board shall be as provided for in Section 329.01 of the Ordinances.

Meetings of the Board shall be held in the City Hall at 9:30 a.m. on each Monday, except when that day is a legal holiday recognized by the City, in which case the meeting shall be held on the following day.

A majority of the Board shall constitute a quorum.

A special meeting may be called by the Secretary to the Board (hereinafter “the Secretary”) at the request of the Chairperson or of three other members of the Board.

In the absence of a quorum, the minority present may call the meeting to order, receive information and arguments, or adjourn until the next regular or special meeting.

III. ANNUAL MEETING

The annual meeting of the Board shall be the first regular meeting in February of each year or upon a date determined at the discretion of the Board.

IV. CHAIRPERSON

Pursuant to the City's Charter and the Codified Ordinances, the Chairperson of the Board (hereinafter "the Chairperson") shall be appointed annually by the Mayor. The Chairperson shall have the following duties:

1. Preside at all meetings of the Board;
2. Sign all extra-official communications;
3. Appoint all committees; and
4. Perform such other duties as may be necessary or incident to his/her office to ensure the successful functioning of the Board in accordance with the intent and purpose of the Ordinances.

The Chairperson is no more nor no less empowered than other members of the Board.

The Chairperson is able to motion or second the vote of a decision of the Board.

The Chairperson shall defer to another member of the Board to motion or approve a decision voted upon by the Board. Absent a motion or second coming, the Chairperson may motion or second a vote of the Board.

V. VICE-CHAIRPERSON

A Vice-Chairperson shall be elected by a majority of the board and shall serve until a successor is elected. The Vice-Chairperson shall perform the duties of the Chairperson in the absence of the Chairperson at any Board meeting.

VI. SECRETARY

In accordance with the City's Charter and the Codified Ordinances, the Director of City Planning shall designate from the staff of the Planning Commission an employee who shall be the Secretary of the Board (hereinafter "the Secretary").

In addition to the duties imposed by Cleveland Codified Ordinance 329.01, the Secretary shall have the following duties:

1. Receive and file all appeals made to the Board;
2. Insert notices in the City Record of all appeals filed with the Board;
3. Serve notice by mail to the appellant and as far as practicable, all directly affected property owners or their agents of the day, time and place of the hearing and maintain a record of the names and addresses of the persons served in each case;
4. Prepare a calendar containing all cases to be heard by the Board;
5. Keep minutes of the Board meetings and keep a record of all decisions rendered by the Board;

6. Transmit one copy of each motion or resolution to the appropriate administrative officer for zoning in the Building and Housing Department or City administrative authority relevant to an appeal filing and one copy to the Appellant;
7. Furnish copies of the calendar to each member of the Board and to the Building and Housing and/or City administrative authority relevant to an appeal filing at least seven days prior to each meeting;
8. Provide a copy of the calendar to the office of the City Clerk for posting at least seven days prior to each meeting;
9. Conduct all official correspondence of the Board.
10. Perform such other duties as may be necessary for expeditious disposition of appeals to the Board;
11. Maintain a permanent record of the attendance and proceedings of the Board, showing the Board's action and vote on each case;
12. Cause to be published in the City Record a summary of the proceedings of the Board;
13. At the end of each calendar year prepare an annual report of the proceedings of the Board; and
14. Sign all minutes of Board proceedings.

VII. POWER AND DUTIES

The Board shall hear and decide appeals from any order, requirement, decision or determination of the any administrative officer relating to zoning or appeals from other administrative officers' decisions that the Board has authority to act upon. Within the limits of its powers, the Board may reverse, affirm wholly or in part, or modify any order, requirement, decision or determination appealed from, and shall make such order, requirement, decision or determination as in its opinion ought to be made under the circumstances, and to that end shall have all of the powers of the officer from whose decision the appeal is taken.

The Board shall also hear and decide all appeals made for exceptions to and variations in the application of ordinances, or orders or regulations of administrative officials or agencies and all matters otherwise referred to it by any provision of the Ordinances. Unless otherwise specified in the Ordinances, the Board shall review appeals from administrative officers' decisions unrelated to zoning upon the basis whether the decision appealed from was arbitrary, capricious, or an abuse of discretion.

A decision of the Board reversing or modifying an administrative decision or granting a variance must be by the affirmative vote of a majority of its members.

A decision of the Board shall become final when the Board ratifies its decision made at the time of the previous hearing. If the Board places preconditions on its ratification of a decision, the preconditions

must be satisfied within six (6) months **or** the Board may dismiss the appeal for failure to satisfy the preconditions without showing good cause for the Board to grant an extension.

No member of the Board shall pass or vote upon any question before the Board in which he or she has a direct or indirect financial interest.

A Board member shall disqualify himself or herself from a hearing in which the member's impartiality might reasonably be questioned, including but not limited to instances where: (1) the member has a personal bias or prejudice concerning a party or a party's representative, or personal knowledge of disputed facts: (2) the member knows that he or she, individually or as a fiduciary, or the member's spouse, parent, or child wherever residing, or any other person in the member's household, has an economic interest in the matter in controversy.

No officer or employee of the Board shall recommend an attorney, architect, or any other person to represent an appellant in the prosecution of an appeal.

VIII. POSTPONEMENTS AND CONTINUANCES

The Board, in its discretion, may postpone or continue any matter pending before it to a later date. Specifically, the Board may grant requests for continuances or postponements, upon a showing of good cause, to an appellant or authorized agent, to an elected official, and to a member of the City staff, or anyone else with standing in the matter to make such a request. The Board may order a postponement or continuances upon its own motion.

A request for postponement of a hearing shall be in writing, shall state the reason for the postponement and shall state the number of previous postponements granted and at whose request. The request must be filed with the Board's Secretary. The Board may waive these requirements as it determines the circumstances so demand.

The grant or denial of a request for postponement of an appeal shall be made at the time of the next scheduled meeting of the Board or at such earlier time as the Board may determine.

If the request for postponement is denied, the hearing will proceed on its scheduled date.

IX. APPEALS

Every appeal from the decisions related to zoning or appeals from other administrative officers' decisions that the Board has authority to act upon, shall be accepted by the Secretary, if the appeal is filed on a form provided by the Board or a reasonable facsimile thereof and if the filing fee is paid at the time of filing.

An appeal to the Board must be made within the time specified in the applicable ordinance, compliance order, or notice, or, if no time is specified, no later than six (6) months after the date of City officials' determination, order, requirement or decision.

The appellant shall furnish all information requested by the Board as it deems necessary for it to decide appellant's appeal.

The appellant or other interested party who seeks to subpoena and require the attendance of witnesses shall prepare and issue the subpoena in accordance with Ohio law. The party seeking the subpoena shall submit it to the Board for signature at a regular meeting of the Board or at any other time the Board may be convened for official business.

An appeal already published in the City Record may be withdrawn only with the approval of the Board.

X. MEETINGS

a. The hearings of the Board shall be public. The procedure in the public hearing shall be as follows:

1. Requests for postponement or continuance;
2. Requests for dismissal or for withdrawing of appeals;
3. Hearing of appeals;
4. Consideration of pending motions;
5. Review of decisions pending ratification; and,
6. Any other business as may be properly brought before the Board.

b. The procedure in hearing of appeals shall be as follows:

1. Chairperson calls the appeal;
2. Description of the matter;
3. Swearing in of witnesses;
4. History of the property, if relevant to appeal;
5. Legal standard of review;
6. Statement and presentation of evidence by the Appellant or his agent and others on his or her behalf;
7. Objections and presentation of evidence of interested property owners and other objections, comments or information pertinent to the case;
8. Rebuttal by appellant;
9. Board questions for appellant or other interested parties;
10. Staff testimony and recommendations;
11. Disposition of the appeal;

XI. REHEARING / RECONSIDERATION

The Board may grant a Request for Rehearing before the time runs to appeal the determination made at the hearing (30 days from ratification of decision), upon a request showing any of the following: (1) Irregularity in the proceedings of the hearing or abuse of discretion by which an aggrieved party was prevented

from having a fair hearing; (2) Accident or surprise which ordinary prudence could not have guarded against; (3) The decision is contrary to law or an error of law occurred at the hearing; (4) Newly discovered evidence, material for the party applying for rehearing, which with reasonable diligence could not have been discovered and produced at the original hearing; or (5) good cause shown as determined in the sound discretion of the Board.

The Board may grant a Request to Reconsider any prior Board action after the time to appeal that action has run, but not more than 6 months after ratification of that action, for any of the following reasons: (1) clerical mistake or scribes' error in the resolution; (2) mistake, inadvertence, surprise or excusable neglect; (3) newly discovered evidence, which by due diligence could not have been discovered in time to request for a rehearing; (4) fraud, misrepresentation or other misconduct of an adverse party; (5) any other reason justifying relief from the action as determined under sound discretion of the Board.

Any member of the Board may move for reconsideration of any decision made by the Board prior to ratification of its decision.

XII. REINSTATEMENT OF DISMISSED APPEAL

A request for reinstatement of an appeal dismissed by the Board must be filed with the Board within seven (7) days of the dismissal. This request shall be in writing and shall be supported by an affidavit setting forth the reasons the appeal should be reinstated.

No appeal shall be reinstated except upon determination by the Board of good cause shown.

XIII. REILING OF APPEAL FOR VARIANCE PREVIOUSLY DENIED OR FOR MODIFICATION OF EXISTING VARIANCE.

Any appeal which is identical or substantially similar to a previously filed appeal will be considered a re-filing of an appeal. Any appeal to modify an existing variance will also be considered a re-filing of an appeal.

The Board will dismiss any re-filing of an appeal for a variance as res judicata unless the appellant demonstrates a basis that would prevent the application of res judicata including: substantially changed circumstances, substantial new relevant evidence that was not available at the hearing on the prior appeal, or that the application of res judicata would create manifest injustice.

The Secretary will notify the appellant when an appeal has been deemed a re-filing. The appellant may file with the Board an affidavit or any supporting documentation demonstrating a basis which prevents application of res judicata.

The affidavit or supporting documentation must be filed within thirty (30) days of the date when the Secretary mailed the notice. The Board may dismiss the appeal if the appellant fails to submit the affidavit or

any supporting documentation within thirty (30) days demonstrating a basis that prevents application of res judicata.

XIV. PERMITS

In all matters where the decision of the Board allows the issuance of a permit or license by the City, the Secretary shall forward a written notice of the decision to the proper department. The department shall incorporate the conditions, if any, imposed by the Board upon the permit or license.

The permit or license shall not be issued earlier than seven (7) days after the granting of an appeal unless, for good cause shown, the Board waives the waiting period.

A resolution of the Board granting an appeal shall become void unless permits or licenses are obtained from the proper department or departments, or the rights granted therein are exercised or otherwise vested by the appellant, within six (6) months after the date of the resolution. However, the Board may affirm its decision and extend the time to invoke the resolution for an additional six (6) months if the appellant so requests prior to the expiration of the preceding six-month period upon a showing of good cause for the Board to grant the extension.

XV. ANNUAL REPORT

Upon completion of the annual report of the work of the Board, the Secretary shall send a copy to each of the members, to the Director of City Planning and any additional distribution at the discretion and/or request of the City Planning Director.

XVI. AMENDMENTS

These Rules and Regulations may be amended or supplemented by a majority vote of the Board at any regular meeting, provided that the Members of the Board have received a copy of the proposed amendment at least seven (7) days prior to the meeting.