

Rules of Procedure
Hamilton, Ohio
Board of Zoning Appeals
May, 2019

Introduction

Section 1160.20 of the Zoning Code of the City of Hamilton provides that the board shall adopt its own rules of procedure.

This was originally done in the 1960's. In June, 1971, the Zoning Code was rewritten and accordingly the rules of procedure were changed to coordinate them with the revised code.

Since 1971, the rules have been amended a number of times to reflect changes in the code or in procedures.

This retyping includes all the changes to date including those recently approved. Some portions of the code are included in these rules as well as the board's own specific rules. This was done for coordination and continuity purposes. Code section numbers appearing in parentheses are for reference to related code sections, but may include additional board rules.

**HAMILTON, OHIO
BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

In accordance with Section 1160.20 of the Hamilton Zoning Code, the following rules are hereby adopted to supplement the provisions listed in the Hamilton Zoning Code.

**ARTICLE I
JURISDICTION AND FUNCTION**

SECTION I - (JURISDICTION)

The Board, in accordance with Section 1170.00 has the following jurisdiction:

- (1) Administrative Review: The Board shall have the power to hear and decide appeals, filed as hereinbefore provided, where it is alleged by the appellant that there is error in any order, requirement, decision, determination, grant or refusal made by the Zoning Official in the enforcement and interpretation of the provisions of the ordinance. (1170.10)
- (2) Temporary Structures and Uses: The Board may authorize the temporary use of a structure or premise in any district prescribed elsewhere in the ordinance for the district in which it is located, provided that such use be of a temporary nature and does not involve the erection of a substantial structure. A Zoning Certificate for such use shall be granted in the form of a temporary and revocable permit, for not more than a twelve (12) month period, subject to such conditions as will safeguard the public health, safety, convenience and general welfare. (1170.20)
- (3) Interpretation of Zoning Ordinance and Map: Where the street or lot layout actually on the ground, or as recorded, differs from the street and lot lines as shown on the Zoning Map, the Board, after notice to the owners of the property and after public hearing, shall interpret the map in such a way as to carry out the intent and purpose of the ordinance. In case of any question as to the location of any boundary line between zoning districts or where there is uncertainty as to the meaning and intent of a textual provision, a request for interpretation of the Zoning Map or the textual provision in question may be made to the Board and a determination shall be made by said Board. (1170.30)
- (4) Variances: The Board shall have the power to authorize upon appeal in specific cases, filed as hereinbefore provided, such variances from the terms, provisions or requirements of the ordinance as will not be contrary to the public interest; provided, however, that such variances shall be granted only in such cases where, owing to special and unusual conditions pertaining to a specific piece of property, the literal enforcement of the provisions or requirements of the ordinance would result in practical difficulty or undue hardship, so that the spirit

- of the ordinance shall be upheld, public safety and welfare secured and substantial justice done. (1170.60)
- (5) Use Variance: Except as herein provided under conditional uses in accordance with Section 1155.00, **no use variance** from the District Regulations of this Ordinance will be permitted. (REVISED OR2015-9-80)
- (6) Variance - Conditions Prevailing: Where, by reason of the exceptional narrowness, shallowness or unusual shape of a specific piece of property on the effective date of the ordinance, or by reason of exceptional topographic conditions, or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjoining the piece of property in question, the literal enforcement of the requirements of the ordinance would involve practical difficulty or would cause unnecessary hardship (unnecessary to carry out the spirit and purpose of this ordinance) the Board shall have power to authorize a variance from the terms of the ordinance, so as to relieve such hardship. In authorizing a variance, the Board may attach thereto such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the interest of the furtherance of the purposes of the Ordinance and in the public interest. In authorizing a variance, with attached conditions, the Board shall require such evidence and guarantee or bond as it may deem necessary to enforce compliance with the conditions attached. (1170.62)
- (7) Variance - Findings of the Board: No such variance of the provisions or requirements of the ordinance shall be authorized by the Board unless the Board finds, beyond reasonable doubt, that all the following facts and conditions exist. (1170.63)
- (8) Exceptional Circumstances: That there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property, that do not apply generally to other properties in the same zoning district. (1170.63.1)
- (9) Preservation of Property Rights: That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity. (1170.63.2)
- (10) Absence of Detriment: That the authorization of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purpose of the ordinance or the public interest. (1170.63.3)
- (11) Not of General Nature: No granting of a variance shall be authorized unless the Board specifically finds that the condition or situation of the specific piece of property, for which variance is sought is not of so general or recurrent a nature

as to make reasonably practicable the formulation of a general regulation for such conditions or situation. (1170.63.4)

SECTION 2

- (1) Architectural Design Review Board: The Board has the responsibility to hear and decide appeals filed in accordance with Section 1160.00, et. seq. and Section 1170.00, et. seq. (1126.50)

ARTICLE II Membership

SECTION 1

The Board shall consist of five (5) members appointed by the City Manager for terms of five (5) years. (1160.10)

SECTION 2

Members of the Board shall serve without compensation and shall be citizens of the City: (1160.10)

SECTION 3

At least one (1) member shall be a member of the City Planning Commission whose membership shall terminate simultaneously with his office on the City Planning Commission. A member of the City Planning Commission shall be appointed by the Planning Commission in accordance with their Rules of Procedure. (1160.10)

SECTION 4

If any member misses six (6) meetings within one year, the Board shall request their resignation, and a new member shall be appointed by the City Manager as provided by the Zoning Code and herein.

ARTICLE III OFFICERS

SECTION 1

At the regular January meeting of each year, the Board shall elect one of its members as Chair and one as Vice- Chair. If during the term of office any seat on the Board shall become vacant, the Board shall at the next regular or special meeting elect a successor for the unexpired term. (1160.20)

SECTION 2

The Chair shall preside at the meetings of the Board, call special meetings, administer oaths (if a law representative is not present), compel the attendance of witnesses, and perform such other duties commonly prescribed to such office. (1160.20)

SECTION 3

The Vice- Chair shall perform the same duties as the Chair in their absence.

SECTION 4

In the event the Chair and Vice- Chair are absent from a meeting, the three remaining members shall elect a Chair "Pro-Tem", who shall perform the same duties as the Chair for the balance of the meeting.

SECTION 5

An appointed City Employee shall serve as Secretary of the Board and as directed, shall send all communications, keep all records, and perform such other duties commonly prescribed to such office. (Part 1160.20)

SECTION 6

The Planning Department will provide such secretarial and stenographic assistance and office supplies as are needed by the Board.

ARTICLE IV MEETINGS

SECTION 1

The regular meetings will be held on the first Thursday of each month in the Council Chambers of the Municipal Building unless changed by the Board or the Chair. If no appeals have been filed, the Chair shall determine if a meeting shall be held to consider other business.

SECTION 2

Special meetings may be called by the Chair of the Board or by any two members of the Board.

SECTION 3

Meetings will be scheduled for 9:00 A.M., except that when in the judgment of the Secretary of the Board the number of appeals and business is such as to warrant additional time. In that event, the meetings shall be scheduled to accommodate such business, and members and other parties shall be notified. (1160.40)

SECTION 4

There will be no meeting if a quorum is not met.

SECTION 5

At a special meeting, only that business may be discussed for which the special meeting was called.

SECTION 6

- (1) Regular Meetings: The Secretary of the Board shall post or publish notice of all regular meetings accordance with applicable law.
- (2) Advertisement of Public Meeting:
 - a. A board calendar listing the scheduled public meeting dates of the year for the Board of Zoning Appeals shall be posted on the City of Hamilton website under the “Board of Zoning Appeals” section and Planning Department page, by January of that year. This posting shall serve as the required advertisement of public meetings of the Board of Zoning Appeals for the year, and shall be updated on a yearly basis.
 - b. Individual meeting agendas listing the meeting time, date of meeting, and location of meeting, shall serve as notice of public meeting, and shall be posted to the City of Hamilton website.
 - c. Required mailing notices or required notification of public hearing items needing review and action by the Board of Zoning Appeals shall also serve as notice of public meeting and will contain language reflecting as such.
- (3) Special Meetings: The Secretary of the Board shall post or publish notice of all special meetings in accordance with applicable law. Notice of special meetings shall be advertised on the city website at least 24 hours prior to the date of the meeting. Special meetings may be advertised further in advance of the meeting date depending on the nature of the requests or topics for consideration as part of the agenda.
- (4) News Media: In the event any member of the news media so requests, the Secretary of the Board shall give to such member at least twenty-four (24) hours advance notice of the time, place and purpose of any special meeting. In the event of an emergency special meeting, the Secretary of the Board shall give such notice immediately to any member of the news media so requesting.

- (5) Special Notice: Any person may, upon request and payment of a reasonable fee, (such fee to be the cost thereof as determined by the Department of Finance), obtain reasonable advance notice of all meetings at which any specific type of public business is to be discussed. For this purpose, the Clerk shall keep a list of persons requesting such notice. Such list shall include information regarding the subject matter of the persons' interests and their payment status. Persons on the list shall be responsible for supplying the Secretary of the Board with current addresses. The Secretary of the Board shall hereafter give notice of meetings to all persons in good standing on said list in accordance with the requests received.
- (6) Executive Sessions: In the event any regular or special meeting will include an executive session (meeting closed to public), all of the above notice requirements shall so state and give the purpose thereof in accordance with Section 121.22 of the Ohio Revised Code.

ARTICLE V VOTING

SECTION 1

Three (3) members of the five (5) member Board shall constitute a quorum. (1160.20)

SECTION 2

The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination on any matter upon which the Board is authorized by the Zoning Code to render a decision. (1170.80)

SECTION 3

The majority vote of those members present shall be necessary to carry out all other regular business of this Board.

SECTION 4

The Chair shall vote in all matters under consideration by the Board.

SECTION 5

No Board member shall participate in the discussion or vote in any matter in which they have a personal interest.

SECTION 6

A record shall be made in the minutes showing the vote of each member on each question, or, if absent or failing to vote, indicating such fact. (1160.20)

ARTICLE VI APPEALS PROCEDURE

SECTION 1 – (BY WHOM)

- (1) An appeal may be made to the Board by any person aggrieved or by any officer, department, board or bureau of the City of Hamilton affected by a decision of the Planning Department, or the Architectural Design Review Board. If the appellant is other than an owner or occupant of the premises under consideration, the appellant shall state on the appeal that they are authorized by such owner or occupant to represent them; or if an officer of the City of Hamilton or a representative of a department, board or bureau of the City of Hamilton, they shall state their official capacity on the appeal application. (1160.30)(1126.50)
- (2) There shall be no time limit to file an appeal following a decision of the Zoning Authority. (1160.30)
- (3) The time limit to file an appeal following a decision of the ADRB for work already performed shall be sixty (60) calendar days after the decision of the ADRB. (Amended November, 2016)

SECTION 2 - (APPEAL APPLICATIONS)

- (1) Appeals filed later than fourteen (14) days prior to a regular meeting date may not be heard until the succeeding regular meeting. (1160.30)
- (2) The application for an appeal shall be submitted in such forms as the Board may prescribe and approve. The application shall contain the present use of the building and premises and the proposed use of the building and premises, the appellant's relation to the property, a statement of the reasons the appellant feels that their appeal should be approved, and such other information as may be required by the Board.
- (3) The appellant shall furnish the following with the application: (1170.50)
 - (a) Plot plan, drawn to scale, showing the actual shape and dimensions of lot to be built upon or used, and designating all lot lines; the exact size and location of all existing buildings and accessory buildings, and all proposed additions or new buildings or structures. This may be waived by the Secretary of the Board prior to the submission of the appeal when such information is not relevant to the hearing of the appeal.

(b) A title containing the name of the appellant, or owner (if different from appellant), address, and lot number of the property concerned in the appeal shall appear on all information furnished with an appeal. A scale of any drawing (when required to be drawn to scale) shall be noted on the drawing.

(c) A fee of \$200.00 shall accompany each appeal or request. An appeal shall be considered filed when the fee is paid and one copy of the application is completed, signed and left at the office of the Planning Department along with all papers and information as required in the application. An application shall be prepared and approved by the Board to give instructions to appellants filing appeals.

SECTION 3 - (ACTION ON APPLICATION)

- (1) If the appellant, Secretary of the Board or other interested party desires to subpoena witnesses, they shall make a request of the Board Chair to subpoena such witness. Such requests shall be filed at the Planning Department office at least five (5) working days before the scheduled hearing. The appellant or other interested party making such request shall pay all costs incurred to subpoena any witness. (1160.20)
- (2) The Secretary of the Board shall prepare a report to the Board describing the situation and the violations involved. (1160.30)
- (3) The Secretary of the Board shall transmit to the Board, approximately one week prior to the meeting or as soon thereafter as possible, the appeal application and all the papers or information required or necessary for proper hearing of the appeal. Copies, as required, shall be sent to all board members. (1160.30)
- (4) The Secretary of the Board shall notify the appellant and all owners of property within 100 feet of the property in question the date, time, place and purpose of the hearing. (1160.40)

SECTION 4 - (HEARINGS)

- (1) All hearings shall be open to the public. (1160.20)
- (2) A separate public hearing will be conducted on each application appeal
- (2) The Board shall keep a record of its proceedings. Findings of fact shall be included in the minutes of each case of a requested variation or appeal, and the reasons for approving or denying such variation or appeal shall be specified. All records of proceedings, findings, determinations and actions of the board shall

be filed immediately in the Planning Department office and shall be a public record. (Part 1160.20)

- (3) The Secretary of the Board or member of city staff will present and explain the case, setting forth the reasons for this action.
- (4) Following the Secretary of the Board or member of city staff's presentation, the appellant may appear and be heard or may have any person appear and be heard either in person or by duly authorized agent or attorney. The Board shall have the right to refuse to hear an appeal unless the appellant or his agent is present. (1160.40)
- (5) The Board will then hear any other interested parties. (1160.40)
- (6) The Board shall have the right to question any witness.
- (7) The Board will render a decision as soon as practical after conclusion of the hearing. (1160.40)
- (8) At the request of the appellant or the Secretary of the Board and/or on the motion of the Board, the hearing may be tabled for further evidence or information.

SECTION 5 - (FOLLOWING HEARING) (1170.80)

- (1) The Secretary of the Board shall inform the appellant by letter, as soon as possible following the hearing, of the decision of the Board. The Board's decision shall not become final until the expiration of five (5) days from the date such decision is made, unless the Board shall certify otherwise.
- (2) No order of the Board permitting erection or alteration of a building or the use of a building or premises shall be valid for a period longer than six (6) months, unless a building permit for such erection or alteration is obtained and the work is started within such period, or where no erection or alteration is necessary, the permitted use is established within such period, or an extension is requested in writing and granted by the Board. In considering an extension, the Board shall determine if there have been any changes in the law or condition upon which the appeal was granted, and may require a new appeal be filed. (1170.80)
- (3) No appeal on which a decision has been rendered by the Board shall be reheard, nor shall a new appeal be accepted by the Board until the passage of one (1) year from the date of hearing of the original appeal, except under the following rules and procedures:

An appellant who desires a rehearing shall submit a written application to the board indicating the basis for same under one of the three following reasons:

- (a) A change of the zoning ordinance in the area of the appellant's original appeal;
- (b) Presentation of additional substantive information not furnished to the Board at the original hearing; or
- (c) A substantial change in the nature of the use of properties within the area in which the property subject of the original appeal is located.

An appellant requesting such a rehearing shall submit the reason or reasons which such an appellant deems to be grounds sufficient for a rehearing and the Board, without hearing additional oral argument, shall determine if the appeal warrants rehearing. If a rehearing is determined to be justified, the appellant shall be so notified by the Secretary of the Board. The appellant shall then follow the normal procedure for a hearing before the Board. If the Board determines from the written application of the appellant that a rehearing is not justified, the Secretary of the Board shall forthwith notify the appellant of the Board's decision.

ARTICLE VII GENERAL RULES

SECTION 1 - (CHANGE OF NON-CONFORMING USE)

Section 1109.54 provides that the Board of Zoning Appeals may make general rules permitting non-conforming uses to be changed to other non-conforming uses. Accordingly, the following changes in non-conforming uses are to be permitted:

- (1) From a zoning standpoint, beauty shops and barber shops shall be considered one and the same, and a change from one such non-conforming use to another such non-conforming use will be considered equally appropriate to the district and will not require specific approval by the board. (July 1, 1976)

SECTION 2 - (INSUFFICIENT LOT SIZES)

The Board grants authority to the Planning Department to issue zoning permits for lots which do not have the required minimum lot area, providing they are lots which are newly created by lot splits by the Planning Commission from substandard lots of record existing on June 9, 1971 as provided in Section 1131.10; and providing the area of the resulting lots do not decrease. (July, 1980)