RULES AND REGULATIONS OF THE CLEVELAND BOARD OF ZONING APPEALS

(Revised September 9, 2019)

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").

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, 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.

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. Absenting a motion or second coming, he or she 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 Chair person 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 Applicant;

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; and

13. At the end of each calendar year prepare an annual report of the proceedings of the Board.

14. Sign all minutes of Board proceedings.

VII. POWER AND DUTIES

The Board of Zoning Appeals shall have such duties and powers set forth in the City Charter and Codified Ordinances. The Board shall from time to time adopt rules and regulations it deems necessary to implement its duties and powers.

The Board shall hear and decide appeals from any order, requirement, decision or determination of the Commissioner of Building and Housing, or of any other administrative officer, relating to zoning, including the refusal to issue or the granting or revocation of permits by the Commissioner of Building and Housing. The Board shall also hear and decide all matters referred to it by any other provision of the Ordinances. 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.

A decision of the Board reversing or modifying an administrative decision or permitting 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. The Board may dismiss the appeal for failure to satisfy the preconditions if the applicant fails to justify the delay within six (6) months.

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.

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

The Board, in its discretion, may grant up to three requests for postponement of a hearing. Specifically, the Board may grant one request for postponement to an applicant or counsel for applicant, to an elected official, and to a member of the City staff. The Board may order a postponement 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 in its discretion.

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 rulings of the Commissioner of Building & Housing or other administrative officer 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 or compliance order, or, if no time is specified, no later than six (6) months after the City officials' determination, order, requirement or decision.

The applicant shall furnish all information requested by the Board as it deems necessary for it to decide applicant's appeal. If the appellant is not the owner of the property, the appellant shall submit with the application a written and notarized document from the owner authorizing appellant to act as agent for the owner before the Board.

The applicant 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

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

1. Requests for continuances;
2. Requests for dismissals of appeals;
3. Swearing in of witnesses (All witnesses shall testify under oath);
4. Statement by the appellant or his agent and others on his or her behalf;
5. Objections or comments of interested property owners and other objections, comments or information pertinent to the case;
6. Rebuttal by appellant;
7. Any member of the Board may ask questions of anyone interested in the hearing;
8. Disposition of the appeal;
9. Compliance reports;
10. Motions for rehearing;
11. Approval of the minutes of the Board; and,
12. Any other business as may be properly brought before the Board

XI. REHEARINGS/RECONSIDERATION

The Board may grant either a motion for a rehearing of a previous appeal or a motion for reconsideration of any prior Board action, only if the Board determines that new relevant evidence will be presented that was not available at the original hearing or that a change in circumstance exists justifying the rehearing or reconsideration.

The Board may require that a request for a rehearing or reconsideration be supported by an affidavit setting out the new evidence that was not available at the original hearing or the change in circumstance justifying a rehearing.

The filing of a Motion for Rehearing or Reconsideration shall not stay the time by which an applicant has to file an appeal to the Common Pleas Court.

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. REFILING 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 applicant demonstrates a basis that would prevent the application of res judicata including: 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 applicant when an appeal has been deemed a re-filing. The applicant 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 applicant 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 decision of the Board granting an appeal shall become invalid unless permits or licenses are obtained from the proper department or departments within six (6) months after the date of its decision. However, the Board may affirm its decision for additional time periods of six (6) months each if the request is made prior to the expiration of the preceding six-month period.

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.

(Adopted September 9, 2019)