

BYLAWS FOR THE HAMILTON TOWNSHIP BOARD OF ZONING APPEALS

I. PREAMBLE

WHEREAS, Section 519.15 of the Ohio Revised Code requires that a township board of zoning appeals shall organize and adopt rules in accordance with the zoning resolution, and

WHEREAS, Chapter 26 of the Hamilton Township Zoning Code provides for the establishment and powers of a Board of Zoning Appeals, and

WHEREAS, the Hamilton Township Board of Zoning Appeals wishes to establish certain rules and regulations to effectuate its purpose, provide consistency for its proceedings and uniformity in its decisions,

NOW, THEREFORE, the Hamilton Township Board of Zoning Appeals hereby adopts these rules and regulations to be applied to all proceedings of the Board.

II. NAME, PURPOSE AND FUNCTION

The Board of Zoning Appeals of Hamilton Township (hereafter Board) has been established pursuant to Ohio Revised Code Section 519.23. Its purpose, authorized under the Ohio Revised Code, Sections 519.14 to 519.19, is to function in the following capacities:

Administration – To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative official, including the Zoning Administrator (hereafter Z. Administrator), in the enforcement of Sections 519.01 to 519.25, inclusive, Ohio Revised Code, or any other resolution adopted pursuant thereto.

Variance – To authorize, upon appeal, in specific cases, such variance from the terms of the Zoning Code as will not be contrary to the public interest, where, owing to special condition, a literal enforcement of said code will result in unnecessary hardship and so that the spirit of the Zoning Code shall be observed and substantial justice done. Under

no circumstances shall the Board grant a use not permissible by the Zoning Code, in the zone involved.

Action of the Board of Zoning Appeals: In exercising its powers, the Board may, in conformity with said Ohio Revised Code, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination as ought to be made, and to that end shall have all powers as an officer from whom the appeal is taken.

Non-conforming Uses: The Board shall have the power to authorize the completion, restoration, reconstruction, in whole or in part, extension, or substitution of non-conforming uses; taking into consideration the nature of such uses in relationship to the character of adjacent uses, lot size, setback lines, traffic conditions, terrain, and all other factors which in the opinion of the Board, are pertinent to such completion, restoration, reconstruction, extension, or substitution.

Witnesses: The Board may also compel the attendance of witnesses and may administer oaths to witnesses and other individuals appearing before the Board.

III. OFFICERS

At the designated annual organizational meeting each year, the Board shall elect a chairperson, a vice-chairperson and a secretary who shall serve for one year.

The chairperson (or vice-chairperson) in the chairperson's absence shall preside at all meetings.

The secretary shall maintain an attendance roster and shall record minutes.

Whenever there is an even number of Board members present at an appeal hearing, and the vote results in a stalemate, the appeal is automatically denied because in order to be approved, an appeal must be sanctioned by a majority vote.

IV. MEMBERSHIP

The Board of Zoning Appeals shall be composed of five members, appointed by the Trustees of Hamilton Township for five-year staggered terms. Members shall be residents of the township for a period of three years prior to appointment. They shall not represent any special interests.

To help assure the presence of a quorum at meetings of the Board, there shall be a first and second alternate members. If any of the five members of the Board are unable to attend a meeting or participate in any hearing or other proceeding of the Board, the alternate member(s) shall sit on the Board. The alternate member(s) shall be encouraged to attend all meetings of the Board, even if they are not a voting member, to stay apprized of Board proceedings.

The Hamilton Township Trustees shall fill all vacancies on the Board. A vacancy shall ensue for any member who misses three consecutive meetings without prior excuse.

Member(s) of the Board may be removed for non-performance of their duty, misconduct in office, or other cause by the Trustees of Hamilton Township upon written charges being filed with the Board of Township Trustees after a public hearing and after a copy of the charges has been served upon the member(s) charged at least 10 days prior to the hearing either personally or by registered mail or by leaving a copy of the charges at the usual place of residence of the member(s).

The member(s) shall be given an opportunity to be heard and answer such charges.

It is mandatory, in appropriate cases, for all members of the Board to physically view the property for which an appeal is requested, prior to the appeal hearing.

In order that the Board members may legally visit the property for which an appeal is requested, the Administrator shall solicit permission of the owner, trustee, or lessee of the property involved, by requesting written permission. Upon request by Board members, an Administrator may accompany Board members during a property visit.

V. CONDUCT OF BOARD MEMBERS

No member of the Board shall represent an applicant or appellant on matters upon which the Board is to make determinations.

No member of the Board shall participate in any case which he/she has a financial interest in the property or action concerned, or will be directly affected by the decision, or has or believes they have any other conflict of interest. Similarly, no member of the Board shall attempt to influence a decision of the Board in any case which they have such a conflict of interest.

If there is a question regarding the existence of a conflict of interest, the Board member shall bring the issue to the attention of the chairperson. If there is reasonable doubt regarding whether the conflict justifies disqualification, advice shall be sought from legal council.

Whenever there are conflicts of interests by a Board member regarding an appeal hearing, that member shall not be present during the hearing.

Members may disqualify themselves from voting whenever any applicant, or their agent, has sought to influence the vote of the member on the appeal or application, other than in the public hearing.

Board members may seek information from other members of staff, prior to the public hearing, but no member shall discuss the case with any other parties prior to the public

hearing, or express any bias, prejudice, or individual opinion in the case prior to its hearing and determination.

No Board member shall vote on any matter deciding an application or appeal except after attending the public hearing, including any continuation of the hearing, on the application or appeal.

VI. STAFF ASSISTANCE

The Z. Administrator or his/her authorized assistants, shall have the following duties and responsibilities relating to appeals, applications and other Board business:

The Z. Administrator shall receive all appeals and applications and examine the documents and other materials submitted therewith to assure that it is complete and that the required maps, plans or reports are in good order and in sufficient quantity.

The Z. Administrator shall be responsible for docketing, placing matters on the calendar and preparation and publication of public notice of the hearing in one or more newspapers of general circulation as selected by the Board.

The Z. Administrator shall handle any correspondence reasonably necessary and/or appropriate to carry out these functions and copies of correspondence received and sent shall be provided to the chairperson.

The Z. Administrator shall provide a written summary to each member of the Board to be approved.

Thereafter, the Z. Administrator shall prepare a written report to the Board for each appeal or application outlining the facts in the matter, a procedural history and a detailed analysis of the reasons relating to the action or inaction taken by Staff. Unless specifically requested by the Board during a hearing, the report shall include an opinion or recommendation.

VII. LEGAL COUNCIL

The Hamilton Township Law Director shall provide legal advice to the Board as to matters under its jurisdiction and may, upon request of the Board, assist in questioning witnesses. Advice of counsel shall be received and entered in the minutes before disposition of any question of law or matter requiring legal interpretation or advice.

VIII. MEETINGS

The Board shall meet as ordered by the chairperson or township trustees for organizational meetings and any other meetings as called for. Public notice shall be given of such meetings. The Administrator shall schedule hearings following notification of appeal/variance request. Public notice shall be given for all hearings.

Meetings and hearings shall be held at the Hamilton Township Building, 8373 Maineville Road, Maineville, Ohio unless assigned to another location by the order of the chairperson or township trustees. In any case, all official meetings shall be held open to the public as set forth by the Ohio Revised Code.

Quorum shall be a majority of the membership of the Board.

Public hearings shall be recorded on tape and in minute form, all material being retained in accordance with the Ohio Revised Code.

At public hearings, individuals in attendance shall register their names and addresses. There shall be a swearing-in of all individuals wishing to be heard at the hearing. In the interest of efficient procedure, time limits may be set by the chairperson for individuals wishing to be heard at public hearings.

Procedure for hearings shall be as follows:

- a. The rules of the parliamentary procedure are not strictly applicable to the meetings and public hearings of the Board. The procedure for the hearing shall be outlined.
- b. The legal notice shall be read, as published.
- c. The Z. Administrator's report shall be read. Any other written information of substance pertinent to the hearing shall be read.
- d. The applicant or applicant's representative shall present the appeal or make a statement(s).
- e. Comments/Questions from the audience members may be presented.
- f. Comments/Questions from members of the Board may be presented.
- g. Applicants and individuals present shall be permitted the opportunity to make a final statement(s).
- h. Request for motion and second is made by the chairperson, or the Board may vote to table the hearing in progress and schedule a later date for the receipt of additional evidence. If the hearing is continued to a subsequent date, such date shall be announced at the current hearing and no further publication will be required.
- i. If the Board does not adjourn and a Board member moves for a vote and the motion is seconded, further discussion by the Board may be heard prior to voting.
- j. The Vote is taken.
- k. Announcement that the results of the vote will be forwarded to the township authorities, with a copy of the minutes.
- l. Hearing shall be adjourned by majority vote.

IX. FINDINGS AND DECISIONS

At the conclusion of the hearing on each case, the Board shall examine the evidence before it in relation to findings required to make its decision.

The chairperson may elect, subject to being overruled by a majority vote of the Board in attendance on motion duly made, seconded and passed:

- a. To proceed immediately to determination and decision;
- b. To defer determination and decision until later in the same meeting; or
- c. To defer determination and decision until a subsequent meeting.

Decisions, including and conditions relating thereto, shall be made by a motion, which shall be seconded. All motions shall be sufficiently detailed for the record and set forth adequate findings of fact and conclusions of law upon which it is based. The chairperson will then preside over discussion amongst Board members relating to the case. Members of the Board shall be permitted to freely state their opinions and ask any questions. Thereafter, the chairperson shall instruct the Secretary to call the roll for a vote.

The concurring vote of a majority of the members of the Board present at the meeting shall be necessary to have a motion passed. A vote of abstention shall not be counted as a concurring vote. A tie vote shall result in a failure of the motion.

Written notice by certified mail of the Board decision shall be given to the applicant or appellant and to the Z. Administrator, Board of Trustees and to other interested parties who have requested such notice, by ordinary mail, as directed by the Board as soon as reasonably possible after the decision is reached, but no later than seven (7) days after the decision has been made.

X. TIME LIMITATIONS

As conditions to a variance or conditional use permit granted or approved, the Board may establish priorities for all or part of the actions proposed in relation to the variance or conditional use permit.

The Board may also set time limits within which all or part of the actions proposed shall be begun and/or completed.

As part of such conditions relating to time limits, the Board may require performance bonding or other surety in amount and form appropriate to the circumstances of the case. Such bonding or other surety may also be required to assure continued maintenance of facilities required as conditions or safeguards.

Upon expiration of time limits, unless an extension has been granted by the Board, the variance or conditional use permit shall expire and become void, together with all permits issued pursuant thereto, and construction shall cease unless the Z. Administrator determines that a stay of further construction would cause imminent peril to life liberty or property, in which case construction under the permit shall continue until such peril is removed.

Where time limits have expired and a variance or conditional use permit has been voided, a new application may be submitted to the Board.

Applications for an extension of time must be made in writing, at least twenty (20) days before time limits expire, setting forth the facts and circumstances necessitating the request. The Board will convene a special meeting to consider the request.

XI. REQUESTS TO WITHDRAW OR AMEND AN APPEAL OR APPLICATION

On written request of the applicant, appellant or authorized agent, an appeal or application may be withdrawn at any time before the Board makes its decision in a case.

Applicants, appellants or their authorized agents may amend applications or appeals in any lawful manner on written request delivered to the Board not less than ten (10) days prior to the scheduled public hearing. If an amendment is presented timely, the chairperson shall determine whether there is a substantial difference between the case as it has been described in the public notice and the case as amended. If a substantial difference is found, a new public notice shall be issued, with fees paid by the applicant, before the hearing of the case may proceed.

XII. DEFERRALS AND CONTINUANCES

On its own motion, or on approval of requests by applicants, appellants, or their authorized agents, the Board may defer the hearing of cases or provide for later continuance of cases on which hearings have begun. Such deferrals or continuances shall be permitted only for good cause and, until time and place is stated, shall require new public notice, with fees paid by applicants or appellants if deferrals or continuances are at their request or result from their actions.

XIII. AMENDMENTS TO RULES AND REGULATIONS

These Rules and Regulations may be amended by the affirmative vote of at least four members of the Board where such amendment would be contrary to a requirement or limitation set by law or the Zoning Code or as otherwise desired. An amendment may be proposed at any meeting of the Board and shall not be acted upon until the following meeting. Not less than seven (7) days prior to the meeting at which the amendment is to be voted upon, members shall be sent a copy of such proposed change.

Upon approval by the Board of an amendment to these Rules and Regulations, the chairperson shall forward it to the Hamilton Township Trustees for consideration. The Trustees will consider the approved proposed amendment at their next scheduled meeting for formal incorporation. The Resolution of the Trustees will be forwarded back to the Board. At its next meeting, the Board must approve the Resolution of the Trustees by a majority vote to validate the amendment.

