

Rules of Procedure Hamilton, Ohio

Board of Zoning Appeals
August, 2023
(Revised August 3, 2023)

Introduction

Section 4102 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 Sections 4100 and 4200 of the Hamilton Zoning Ordinance, the following rules are hereby adopted to supplement the provisions listed in the Hamilton Zoning Code.

**ARTICLE I
JURISDICTION AND FUNCTION**

SECTION 1 - (JURISDICTION)

The Board shall have jurisdiction over all matters as set forth in Sections 4100 and 4200 of the Hamilton Zoning Ordinance (HZO)

SECTION 2

Architectural Design Review Board: The Board has the responsibility to hear and decide appeals filed in accordance with Sections 2610 and 2620

**ARTICLE II
Membership**

SECTION 1

The Board shall consist of five (5) members appointed by the City Manager for terms of five (5) years. (4100)

Alternate members may be appointed by the City Manager to serve in place of a member when such member notifies the Planning Department that the member will absent or unable to participate in an item. Members shall meet all the qualifications of the member they are appointed to substitute. Alternate members shall possess all the powers and responsibilities of such member of the Board. (4101)

SECTION 2

Members of the Board shall serve without compensation and shall be citizens of the City (4100)

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SECTION 3

At least one (1) member shall be a member of the City Planning Commission whose membership shall terminate simultaneously with his or her 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. (4100)

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. (4100)

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. (4102)

SECTION 3

The Vice-Chair shall perform the same duties as the Chair in their absence (4102).

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. (4102)

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. (4102)

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.

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 in 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. (4102)

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 (4209)

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. (4102)

ARTICLE VI PROCEDURE

SECTION 1 – (BY WHOM)

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.

SECTION 2 - (APPLICATIONS)

- (1) Appeals filed later than fourteen (14) days prior to a regular meeting date may not be heard until the succeeding regular meeting. (4103)

The application shall be submitted in such forms as the Board may prescribe and approve.

A Pre-Application meeting shall be held prior to the scheduling of any hearing in front of the Board. The Pre Application meeting shall include the Applicant, or their designee, and the Secretary of the Board.

SECTION 3 - (ACTION ON APPLICATION)

- (1) If the applicant, 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. (4103)
- (2) The Secretary of the Board shall prepare a report to the Board describing the situation and the violations involved. (4103)
- (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. (4103)
- (4) The Secretary of the Board shall notify the applicant or appellant and all owners of property within 100 feet of the property in question the date, time, place and purpose of the hearing. (4103)

SECTION 4 - (HEARINGS)

All hearings shall be open to the public. (4102)

- (1) 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 application or appeal shall be specified. All records of proceedings, findings, determinations and actions of the board shall be filed as soon as practical in the Planning Department office and shall be a public record. (4102)
- (3) The Secretary of the Board or member of city staff will present and explain the case, setting forth the reasons for this action. (4102)
- (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. (4102)
- (5) The Board will then hear any other interested parties. (4102)
- (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. (4102)
- (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)

- (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 thirty (30) days from the date such decision is made, unless the Board shall certify otherwise.

ARTICLE VII GENERAL RULES

SECTION 1 - (CHANGE OF NON-CONFORMING USE)

Section 4208 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 4302; and providing the area of the resulting lots do not decrease. (July, 1980)