

North Olmsted Building & Zoning Board of Appeals Rules and Regulations

Article I – Organization

Section 1 – Officers

The officers of the Building & Zoning Board of Appeals shall be elected as established in Chapter 147 of the North Olmsted Administrative Code. In the event that an office becomes vacant, such vacancy shall be filled for the unexpired term by a member who is elected by a majority vote of the Board.

Section 2 – Duties of Officers

- (a) Chairman: The Chairman shall preside at the meeting of the Board and shall exercise such other duties as are commonly exercised by the chief executive officer. The Chairman of the Building & Zoning Board of Appeals shall administer oaths and may, upon a written request to do so, demand the attendance of witnesses and the production of books, papers and other evidence pertinent to any issue before the Board.
- (b) Vice-Chairman: The Vice-Chairman, in the absence or inability of the Chairman to act, shall perform the duties of the Chairman and possess the same powers and authority as the Chairman.

Section 3 – Administrative Assistant

The Chairman shall be assisted by the Administrative Assistant of the Department of Planning & Development, whose duties shall be keeping the minutes and records of the Board, preparing all notices, conducting all correspondence, and performing such other duties as shall be required by the Board.

Section 4 – Legal Advisor

The Director of Law is the sole legal advisor to the Board as well as individual Board members, in their official capacity. The Director of Law may assign an Assistant to serve on his behalf and subject to the Director's supervision. Board members are prohibited from soliciting or relying upon private counsel or other parties or officials for legal advice as it relates to individual or collective official duties, standards of substantive or procedural law or other matters of business before the public body.

Section 5 – Source of Law

All matters of substance and procedure, including these Rules and Regulations, are subject to and shall be administered consistently with the Charter and Ordinances of the City of North Olmsted.

Article II – Meetings

Section 1 – Regular Meetings

Regular meetings of the Board shall be held on the first Monday of each month at 7:00 p.m. in Council Chambers. If that day should be a holiday, then the meeting shall be held on the following Monday. Notice in writing of regular meeting, the minutes of the previous meeting and the agenda of the coming meeting shall be delivered to each member at least five (5) days prior to such meetings.

Section 2 – Public Notice

- (a) In addition to public notice required by Section 147.05(a)(1), the Administrative Assistant shall also send notification to other properties as directed by rule or regulation of the Building & Zoning Board of Appeals or by its special order in accordance with Section 147.05(a)(2).
- (b) Pursuant to Section 147.05(a)(2), the Building & Zoning Board of Appeals directs its Administrative Assistant to send notification to properties that, but for the location of public utility rights of way, would meet the proximity requirements of Section 147.05(a)(1).
- (c) Pursuant to Section 147.05(a)(2), the Building & Zoning Board of Appeals directs its Administrative Assistant to send notification to properties of any person requesting such notice, including members of the media or public officials, who may also consent to service by email in lieu of ordinary mail. The Administrative Assistant shall annually verify such requests for continued notification.

Section 3 – Quorum

Three members shall constitute a quorum for the transaction of business. However, a favorable vote by at least three (3) members is required as a majority vote for an official action. In the event that less than a full Board is present to hear an application, the Chairman shall so advise that three (3) affirmative votes are necessary to approve any variance or other matter. The Applicant may, before being heard, request that the matter be tabled until the next regular or special meeting.

Section 4 – Special Meetings

Special meeting of the Board shall be held whenever called by the Chairman or the Vice Chairman in the absence of the Chairman. Matters considered at a special meeting shall be limited to those described in the notice of the meeting. Notice of a special meeting shall be given in writing stating the purpose of the meeting at least one (1) day prior to the meeting.

Section 5 – Order of Business

- I. Roll Call
- II. Review and Correction of Minutes
- III. Residential Appeals and Requests
- IV. Non-Residential Appeals and Requests

- V. Communications and Miscellaneous Business
- VI. Adjournment

The Chairman may adjust the Order of Business and may also rearrange the sequence of any or all applications docketed before the Board, as deemed necessary or appropriate, in the sole discretion of the Chairman, to enhance the Board's efficiency, time-management and in order to expedite the Board's review.

Section 6 – Continuance of Cases

- (a) Application Withdrawn from Consideration: An applicant may unilaterally withdraw an application from consideration by Board prior to the commencement of proceedings as to their request. However, after or during the hearing of evidence, any request to withdraw an application shall be subject to the Board's approval. Prior written notice of withdrawal should be addressed to the Administrative Assistant by 12:00 p.m. of the day of the meeting. Any applicant that withdraws an application shall be required to file a new application and accompanying fees.
- (b) Application Removed from Agenda: An applicant may request that an application be removed from the agenda but only upon prior written notice to the Chairman, delivered to the Administrative Assistant not later than 12:00 p.m. of the day of the meeting. Such request may be granted by the Chairman only upon a showing of good cause or extenuating circumstances and the applicant's appearance may be excused by the Chairman. Every reasonable effort shall be made to notify interested parties of said removal.
- (c) Applicant's Request to be Tabled: If not Withdrawn from Consideration or Removed from the Agenda, an applicant may request that an application be tabled at any time before or during the Board proceedings. Such request shall be supported by good cause and must be presented to and determined in the discretion of the Board. Unlike Removal from the Agenda, the applicant's appearance is not to be excused by the Chairman upon prior written request to be tabled.

Section 7 – Time for Consideration of Agenda Items

In order to provide time for presentation of all agenda items, the Chairman may impose reasonable limitations on the time allotted to any speaker, applicant and/or other presentation. If such limitation is imposed, any party may object and shall be granted additional time at the end of docket, within the above deadline for submission, or shall be rescheduled for further hearing at the next regular or special meeting. This rule shall be construed to protect every persons a right to be heard and to provide sufficient time for the full presentation of all evidence to the Board.

Section 8 – Recess

The Chairman, at his discretion, may call a recess.

Section 9 – Executive Session

The Board may go into executive session only upon compliance with law.

Article III – Conduct of Hearing & Decision

Section 1 – Appearances

Every applicant and property owner shall appear before the BZBA to present his or her application, unless excused by the BZBA, in its discretion, for good cause shown. Any person may be represented by legal counsel before the BZBA. Representation by legal counsel is not a substitute for the required appearance by the applicant and the property owner. The failure to appear in general or an unexcused absence by the applicant and the property owner at the BZBA hearing may result in the application being tabled.

An applicant may present the testimony of an architect, building contractor or other professional not in attendance, provided that the applicant presents to the BZBA that the applicant has the authority and consent to present such evidence.

Whenever the applicant is not the property owner (for example, a tenant or a developer), the property owner's prior consent to the development proposal and variance must be confirmed in writing and filed with the application. The failure to timely file such consent may result in the matter not being placed on the docket of the BZBA until such consent is on file. This requirement is in addition to the required appearance of the owner at the BZBA hearing.

Section 2 – Testimony

The witness whose testimony may be desired at any hearing before the BZBA shall testify orally, under oath, unless the BZBA, for good cause shown, deems it proper in special cases that written evidence, under affidavit or otherwise, be submitted. Relevant testimony which is not cumulative or hearsay will be received. An applicant, the City and all interested parties are entitled to be heard by the BZBA, present evidence and to cross examine the opposing witnesses. Signed but unverified petitions and correspondence may be rejected by the Board. The Board shall reject and shall not consider any unsigned or anonymous petition, statement or correspondence.

Section 3 – Evidence

The record before the BZBA shall contain any and all forms, filings, correspondence, site plans or other submittals to the Building Department regarding the project or street file for which a request is submitted. It shall also include minutes or a preliminary draft of minutes from the Planning and Design Commission which relate to said project or request. Copies of such records and other submissions, from the applicant or the City departments, shall be delivered to Board members five (5) days prior to the scheduled meeting. In the event that new or revised documentation is submitted at the scheduled meeting, the Board may but is not required to consider such new or revised information and may but is not required to table the mater to a date certain to give it due consideration.

Each applicant bears the burden of describing and proving its position, based upon the applicable standards of law, and is solely responsible for the accuracy, clarity and scale of its diagrams.

Board members may inspect the premises to view the physical characteristics of the property and may compare the existing physical conditions to the applicant's submittals. Other than official introduction and request for consent to enter and view the property, Board members must refrain from any communication regarding the matter or subject of review and limit the property visit to observations. The Board members must refrain from collection of evidence outside of the hearing.

Relevant authenticated or public documents, photographs, maps, plans, drawings, etc., will be received in the record in the form of legible copies. The Chairman will rule on all evidentiary matters. An applicant shall be entitled to proffer evidence and otherwise be heard on all issues.

Section 4 – Order of Hearing

The normal order of hearing, subject to modification by the Chairman, shall be:

- (a) Introduction of the case by the Chairman
- (b) Summary of case by staff
- (c) Presentation by the applicant
- (d) Presentation by staff and other interested parties
- (e) Rebuttal by applicant
- (f) Board members may question participants at any point in the hearing
- (g) Legal counsel
- (h) Board deliberation, findings and decision on the motion

Every person before the Board shall abide by the order and direction of the Chairman. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of privileges before the BZBA and shall be ruled upon as the Chairman deems proper. The Chairman shall permit questions to be presented to and answered by any and all witnesses.

Section 5 – Conflict of Interest

Any member of the Building & Zoning Board of Appeals who shall have a conflict of interest on any matter that is on the Board's agenda shall voluntarily excuse himself and refrain from discussing and voting on said items as a Board member.

Section 6 – Voting

The Board may deliberate and make a final disposition of a matter by majority vote of members present at the hearing and qualified to vote, provided that not less than three affirmative votes are necessary to pass upon any matter. All voting shall be conducted in public. Each member shall provide a voice vote to the Administrative Assistant. Each member shall vote on each motion, application or appeal, unless the member has previously been recused or abstains for good cause shown.

Section 7 – Standards for Review

- (a) In exercising its powers to hear an appeal, the Board by its decision may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, and on all appeals may attach appropriate conditions, and may issue or direct the issuance of a permit, in accordance with the City Code.
- (b) Unless otherwise specified by the BZBA, a variance authorized by the BZBA shall expire if the applicant fails to utilize the authority granted pursuant thereto within twelve (12) months from the date of authorization of the exception or variance. The applicant shall be notified of this limitation. An extension of up to twelve (12) additional months may be granted by the Director of Planning and Development in accordance with the provisions in Chapter 1126.
- (c) Area zoning variances shall be determined based upon the Board's consideration of the following factors:
 - 1. Can the property yield a reasonable return or can there be any beneficial use of the property without the variance?
 - 2. Is the variance substantial?
 - 3. Will the essential character of the neighborhood be substantially altered or will adjoining properties suffer a substantial detriment as a result of the variance?
 - 4. Will the variance adversely affect the delivery of governmental services (e.g. water, sewer, garbage)?
 - 5. Did the property owner purchase the property with knowledge of the zoning restriction?
 - 6. Can the property owner's predicament be precluded through some method other than a variance?
 - 7. Would the spirit and intent behind the zoning requirement be observed and substantial justice done by granting the variance?
- (d) Use zoning variances shall be determined pursuant to appropriate standards of law.

Section 8 – Determinations

Final decisions of the BZBA shall be recorded in the meeting minutes. The minutes of the BZBA, when approved and signed, shall become a part of the record for the decision and should therefore include all findings of facts and reasoning for same.

Section 9 – Reconsideration and Rehearing

After the decision of any question, any member who voted with the prevailing side may move to reconsider any action at the same or the next succeeding meeting. A motion to reconsider shall require the same number of votes as is required to approve the Applicant's requested relief. After a motion for reconsideration has once been acted upon, no other motion for reconsideration shall be made without unanimous consent of the members present.

Any request by an Applicant for reconsideration or rehearing shall be in writing and describe new evidence or proposal as grounds for reconsideration. The reconsideration shall be presented to the BZBA at its next regular meeting as Communications on the Agenda. No request by an

Applicant to reconsider or to grant a rehearing will be approved by the BZBA unless new evidence is described or new reasons submitted that could not reasonably have been presented at the original hearing. Reconsideration as requested by an Applicant shall not be granted in order to accommodate the applicant's demand to rehear and review the same application, proposal and arguments. No request for reconsideration by an Applicant shall be granted in violation of these considerations, nor in violation of Board's jurisdiction with respect to the finality of its Orders.

- (a) Any Applicant request for reconsideration submitted prior to a final decision by the BZBA shall be subject to the foregoing review standards.
- (b) Any Applicant request for reconsideration submitted less than thirty (30) days after a final decision may be considered by the Board, subject to loss of jurisdiction by appeal, and also shall remain subject to the foregoing standards.
- (c) Any Applicant request for reconsideration submitted more than thirty (30) days after a final decision shall be denied.

If an Applicant's request for reconsideration is granted, the application shall be placed on the next docket for a rehearing and shall not proceed until all posting and advertising requirements have been met at the requestor's expense.

Article IV – Records

The Administrative Assistant shall prepare minutes of each meeting for approval by the Board at the next regular meeting. Minutes shall be maintained as public records. Copies of all notices, correspondence, documentary evidence, final orders and other decisions, and forms shall also be maintained as public records.

Article V – Attendance

Section 1 – Notification of Absence

Each member of the Building & Zoning Board of Appeals who has knowledge of the fact that he will not be able to attend a scheduled meeting of the Building & Zoning Board of Appeals shall notify the Administrative Assistant at the earliest possible opportunity and, in any event, prior to 12:00 p.m. on the date of the meeting. The Administrative Assistant shall notify the Chairman in the event that the projected absences will produce a lack of quorum.

Article VI – Proceedings

The form of proceedings of the Board shall be governed by the Charter and Ordinances of the City of North Olmsted and, where applicable, the statutes of the State of Ohio. Further, where not in conflict with such laws, these Rules and Regulations shall govern.

Article VII – Amendments to Rules

Regulations of the Board may be amended or modified at any regular or special meeting of the Board by the affirmative vote of two thirds (2/3) of the Board members, provided that written

notice of the proposed amendments or modifications has been given to each member of the Board not less than five (5) days prior to the meeting.

Article VIII – Policy

All matters of policy affecting the Board shall be decided at regular meetings or at special meeting called for that purpose.

Article IX – Waiver

Where not in conflict with law, any rule herein established may be waived by the affirmative roll call vote of at least three (3) members of the Board.