



Planning Partnership

HAMILTON COUNTY

Regional Planning Commission

Board of Zoning Appeals (BZA) HANDBOOK



A 2013 Publication of the Planning Partnership - Hamilton County Regional Planning Commission

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The Ohio Chapter of the American Planning Association (APA Ohio) is a statewide, non-profit association of citizens and professional planners committed to promoting and enhancing planning and the quality of planning in order to maintain and improve the quality of life for all Ohioans. APA Ohio recommends this Handbook as a practical and thoughtful guide to understanding the basic elements of a BZA and how to effectively administer the process.

About the Board of Zoning Appeals (BZA) Handbook Hamilton County, Ohio 2013

This Handbook used as a template Steve Langworthy's Zoning Board of Appeals Handbook published by the Michigan Municipal League, reprinted July 2006 with updates. All references specific to the Michigan statutes were removed and replaced, as necessary, by the appropriate legal reference from the State of Ohio. On 12/12/2012 William C. Mathewson, General Counsel of the Michigan Municipal League, granted permission to use portions of the Zoning Board of Appeals Handbook published by the Michigan Municipal League.

The bulk of the legal references come from the following sources:

- Jennifer Evans-Cowley, editor, [A guide to planning in Ohio](#). OPC Ohio Planning Conference 2007. Chapter 4: Introduction to Zoning by Holly R. Mattei, AICP
- R. Todd Hunt, June 25, 2010, [BZA: Powers and Duties Variance Authority and Those Other Pesky Applications](#). NE Ohio Planning & Zoning Workshop
[http://planning.lakecountyohio.gov/NEO%202010%20Presentations/Variance%20Authority%20and%20Other%20Pesky%20Applications%20\(Session%204A\).pdf](http://planning.lakecountyohio.gov/NEO%202010%20Presentations/Variance%20Authority%20and%20Other%20Pesky%20Applications%20(Session%204A).pdf) . Mr. R. Todd Hunt, granted verbal permission to use his outline on 11/29/2012
- Dr. Salwa Tawfik Ramadan, [Ohio Planning and Zoning Law Abstract](#), 39th IsoCaRP Congress 2003
http://www.isocarp.net/Data/case_studies/381.pdf
- [Ohio State University Fact Sheet: Community Development. Zoning](#) CDFS-1265-99. Land Use Series.
<http://ohioline.osu.edu/cd-fact/1265.html>
- Ohio Sunshine Laws: An Open Government Resource Manual 2012, go to
<https://www.documentcloud.org/documents/365121-ohio-sunshine-laws-an-open-government-resource.html>
- For a complete Bibliography see Page 23.

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Disclaimer:

This handbook is our best effort in selecting and compiling the most relevant and up-to-date information available as a general reference for Board of Zoning Appeals in Ohio. Please defer to your Legal Counsel for specific advice.

The Hamilton County Regional Planning Commission – Planning Partnership
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1. What is a board zoning of appeals?

The Board of Zoning Appeals (BZA) is a response to the fact that it is almost impossible that a set of regulations affecting the development of land could be universally applied. There are thousands of parcels of land to which zoning standards apply. The Board of Zoning Appeals provides a venue to property owners with unique conditions related to their parcels, who are seeking relief from the strict requirements of the zoning ordinance

If a person wants to do something with his/her property that is not specifically allowed in the zoning regulations, due to a practical difficulty or unnecessary hardship, that person may ask for a conditional use or a variance, depending on the circumstances, to the Board of Zoning Appeals. In sum, the BZA carry out these principal functions:

1. To hear and decide appeals of administrative decisions made in implementing the zoning ordinance,
2. To hear and decide requests for variances from zoning ordinance. Occasionally, the BZA will also be called to interpret the provision of the zoning ordinance.
3. To hear and decide requests for conditional uses in counties and townships (and sometimes in municipalities).¹

2. The role of the BZA is to apply the standards of the zoning ordinance²

The Board of Zoning Appeals (BZA) is the group designated by the legislative authority to make decisions, such as those associated with variances, appeals, and conditional use applications. The BZA is an administrative board that is quasi-judicial in nature. A quasi-judicial entity operates more like a court than a legislative body and uses many standards and procedures similar to those associated with the courts.

The characteristics used to determine if the acts, i.e., proceedings, of an administrative agency are quasi-judicial include the requirements of notice, a hearing, the opportunity to introduce evidence, the right to appeal to a court, and the proceeding needs to determine a “justiciable dispute” between multiple parties requiring the exercise of discretion. The BZA meets all of the characteristics of a quasi-judicial body holding quasi-judicial proceedings.³

For example, a BZA often administers oaths and hears testimony associated with its cases. It should make decisions based upon the facts presented in the record rather than opinions.⁴ Its primary role is to rule on the application of the existing laws as opposed to passing new laws, and therefore it is considered an administrative body. A zoning code should

¹ Approval of conditional uses does generally not depend on the same standards as a variance depends on. Tim Burke, 1/11/2013

² Transcript from A Guide to Planning in Ohio. OPC Ohio Planning Conference, 2007. Edited by Jennifer Evans-Cowley. Chapter 4 Introduction to Zoning by Holly R. Mattei, AICP. Page 4-11

³ Todd Hunt, June 25, 2010. BZA: Powers and Duties – Variance Authority and Those Other Pesky Applications. Page 15.

⁴ For a broader discussion regarding this issue see Ohio Planning and Zoning Law (Meck and Pearlman 483-485)

include clear procedural standards upon which the BZA's decisions should be based. Allowing arbitrary and inconsistent changes can weaken the integrity of the regulations and trigger land-use conflicts, loss of property values, and lawsuits. A BZA's decision typically may only be appealed to in the Court of Common Pleas⁵ as provided by law. In some cases, a municipality's zoning code may require the BZA's decision to be appealed to the legislative body prior to seeking a judicial remedy in the Courts.⁶

There is no formal process for the Board of Zoning Appeals to play an advisory role in determining planning policies or zoning regulations. Accordingly, it is not the role of the BZA to attempt to change those regulations or policies through their actions. This, of course, does not prevent the BZA from communicating their thoughts regarding the ordinance during the course of performing its functions.

3. The enabling legislation

The power to plan, zone or regulate land use belongs to the state. The Ohio Constitution, Article II, § 1, vests the state's legislative power, which includes the police power, in the general assembly. Through its constitution and enabling statutes, Ohio has delegated most of its planning and police power authority to regulate land use to the local level. In recent years, the state has enacted statutes which address land use issue of statewide concern and in effect, take back some of the delegated power. These statutes reflect, for example, a greater concern for the environment by regulating the location of hazardous waste facilities and for disempowered groups by regulating the location of group homes for the disabled and day care facilities. The statutes include full or partial preemption of local regulatory systems. The state's delegation of authority has created a four-track system of planning and zoning power involving counties, townships, and charter, non-charter or statutory plan municipalities. Municipalities are subsequently divided into two classes: Villages, with a population under 5,000; and Cities, with a population 5,000 or greater.⁷

Counties that have adopted a zoning ordinance have zoning authority over townships (but not over cities or villages) which do not have their own zoning ordinance⁸. Cities, villages and townships that have their own zoning ordinances do not fall under county authority.

The zoning enabling act defines the membership, responsibilities and authority of the BZA. It also describes general rules for the formation and operation of a zoning board of appeals.

⁵ Pursuant Chapter 2506 of the Ohio Revised Code

⁶ Meck and Pearlman, 491

⁷ Transcript from Dr. Salwa Tawfik Ramadan, *Ohio Planning and Zoning Law Abstract*, 39th IsoCaRP Congress 2003. Page 4. http://www.isocarp.net/Data/case_studies/381.pdf

⁸ ORC 303.13 places further limits on the structure of a County BZA if the area zoned includes three or more townships.

4. **Membership.**⁹

Many municipalities create a separate board, the Board of Zoning Appeals, to carry out these quasi-judicial duties. However, ORC Section 713.11 also allows a legislative authority of a municipality to delegate these responsibilities to the municipal Planning Commission. More often than not, this arrangement can be found in small villages where it can be difficult to fill vacancies on both a Planning Commission and Board of Zoning Appeals.

Unlike municipal Planning Commissions, a county or township Zoning Commission cannot assume the duties of the Board of Zoning Appeals. ORC Sections 303.13 and 519.13 require a Board of County Commissioners or a Board of Township Trustees to appoint a Board of Zoning Appeals (BZA) whenever a county or township zoning resolution is adopted. The BZA is required to have five members who are all residents of the unincorporated area of the county¹⁰ or township that is zoned.

5. **Bylaws**

The enabling legislation also permits the board zoning of appeals to adopt rules governing their operation, commonly referred to as bylaws. The bylaws should specify certain responsibilities, such as defining officers and their duties, quorum rules, special meeting procedures, conflict of interest procedures, and other aspects of the BZA's operation. Bylaws are not part of the zoning ordinance but are adopted by the BZA as its rules for operation.

Examples of bylaws adopted by townships and cities in several states are included on page 23.

6. **Relation to other bodies or individuals**

It is important to understand the relationship between the Board of Zoning Appeals and others with responsibility in the zoning process. Zoning responsibilities are divided between several individuals and bodies.

- **The planning commission:** Planning Commissions have planning duties, such as creating comprehensive plans for the community or acting as the platting authority, if the municipality adopts subdivision regulations per Chapter 711 of the ORC. A Planning Commission is authorized by Chapter 713 of the Ohio Revised Code to certify a plan to the legislative authority for the adoption of zoning.

Once a municipality establishes a zoning code, the Planning Commission is responsible for reviewing all proposed amendments to

⁹ Transcript from *A Guide to Planning in Ohio*. OPC Ohio Planning Conference, 2007. Edited by Jennifer Evans-Cowley. Chapter 4 Introduction to Zoning by Holly R. Mattei, AICP. Page 4-11.

¹⁰ ORC 303.13 places further limits on the structure of a County BZA if the area zoned includes three or more townships.

the code and making recommendations on the amendments to the legislative body.¹¹

Local ordinances often require that the legislative authority must have supermajority to approve a zone change which was recommended for disapproval for Planning Commission. Supermajority implies a greater level of support for a proposal than a 50% simple majority.

Supermajority should be defined by each jurisdiction to clarify voter qualifications and dispel ambiguity.

The courts give much more credibility to land use actions supported by careful planning than those actions that appear to have been taken arbitrarily against an individual property owner.

- **The legislative body:** Although the Planning/Zoning commission has extensive responsibilities related to the adoption and administration of a zoning code, the legislative body of a community has the ultimate decision-making powers on the adoption¹² and amendments of a zoning code. Additionally, the legislative body has the duty to ensure that the other parties in the zoning process are performing properly in their roles, and it holds the ultimate legal authority under which zoning is enacted.¹³

The members of the BZA are appointed or approved by the legislative body unless the legislative body itself decides to act as the BZA (cities and villages only).

- **The administrator** (planning or zoning administrator as stipulated in the zoning ordinance): The zoning administrator is responsible for the day-to-day administration and enforcement of the zoning regulations. He/she is appointed by the township trustees, county commissioners (in the case of county zoning), or the municipal legislative or administrative body. The zoning administrator is a valuable contact between the BZA and the applicant.

The administrator's duties involve reviewing applications for zoning permits, conducting on-site inspections, investigating violations, maintaining records of nonconforming uses, maintaining up-to-date text and map, and proposing amendments. In zoned areas, all new construction and many additions and other changes in property must receive a zoning permit from the administrator. He/she must have a thorough knowledge of the zoning text and map and use these as a basis for granting permits and citing violations.¹⁴

¹¹ Transcript from *A Guide to Planning in Ohio*. OPC Ohio Planning Conference, 2007. Edited by Jenniffer Evans-Cowley. Chapter 4 Introduction to Zoning by Holly R. Mattei, AICP. Pages 4-10 and 11

¹² Except in counties and townships where the ultimate decision for the original adoption of a zoning code rests with the residents. See ORC 303.11 and 519.11

¹³ Transcript from *A Guide to Planning in Ohio*. OPC Ohio Planning Conference, 2007. Edited by Jenniffer Evans-Cowley. Chapter 4 Introduction to Zoning by Holly R. Mattei, AICP. Page 4-11

¹⁴ Transcript from the Ohio State University Fact Sheet: Community Development. Zoning CDFS-1265-99. Land Use Series. <http://ohioline.osu.edu/cd-fact/1265.html>

7. Duties and Responsibilities of the Zoning Board of Appeals

A. Interpret the zoning ordinance (text and map).

Unlike legal opinions or recommendations of consultants, an interpretation by the BZA establishes the meaning of the matter being interpreted and is deemed to be the actual meaning of the ordinance from that point forward, unless the BZA's interpretation is appealed to the courts. Once an interpretation is made, it is advisable for the planning commission to review the matter to determine whether or not an amendment to the zoning ordinance is needed to further clarify the language (for a text interpretation), or to review the zoning map to determine a specific location of a zoning boundary (for a map interpretation).

Several rules of thumb may help in making interpretations:

1. Base map interpretation on the zoning ordinance itself and on any relevant historical information.
2. Interpret the text of the zoning ordinance based on a thorough reading of the ordinance in order not to have the effect of amending the ordinance.
3. Give weight to reasonable practical interpretations by administrative officials if applied consistently over a long period of time.
4. Keep records of all interpretations. Once an interpretation is rendered, it is the official position of the community as to that provision. Consistency in decision making is important for the long-term.
5. Generally, if equally convincing points are put forth by the zoning administrator and an individual affected by an interpretation, fairness dictates that the person most affected by the interpretation should prevail.

B. Deciding appeals from administrative decisions (by the zoning administrator or by the planning commission, or a historic board)

The zoning board of appeals is empowered to hear and decide appeals from any person aggrieved by an administrative decision. An administrative decision is one made by a zoning administrator or the planning commission, or by the legislative body when they are acting in an administrative capacity, (if, for example, the legislative body approved all site plans). Most often, appeals are the result of a disagreement with a decision of the zoning administrator, or, in rare cases, a person aggrieved by a site plan review decision by the planning commission. Appeals may be required to be filed within a specific time period set in the zoning ordinance.

The BZA cannot hear two types of zoning decisions. The first is an amendment to the zoning ordinance (rezoning or text change) – this is reserved for the legislative body. The second type of decision is for special land uses and planned unit developments, which can *only* be heard by the BZA *if the zoning ordinance specifically allows for an appeal*.

Although the BZA may reverse or affirm, wholly or partly, or may modify a prior decision, its powers are generally limited to determining whether or not the official or body making the

administrative decision acted properly. The BZA must recognize that the zoning administrator or planning commission has already made a decision regarding the issue as part of its delegated duties. The role of the BZA is to determine whether the decision was authorized or supported by the zoning ordinance.

In addition, the BZA should not treat the appeal as a new decision. Rather, *review of the decision should be limited to the information that was available to the body or person who made the decision initially*. Allowing testimony or evidence in addition to that previously submitted is inappropriate, unless the zoning ordinance directs otherwise.

In those instances where the official or body used proper procedures and standards, the BZA should uphold the decision, even if the members personally disagree with the result.

C. Granting variances:

A variance grants permission to depart from a requirement or limitation of the zoning ordinance. There are two types of variances:

- (a) **Use variances:** allows a use of land that is not permitted in the district in which the property is placed. Granting of a use variance requires that the applicant demonstrate that an “unnecessary hardship” would be imposed if the owner cannot use the property as requested.
- (b) **Nonuse variances (also known as area or size variances or dimensional variances):** when the strict or literal application of the ordinance would cause “practical difficulties” for the applicant. Nonuse variance requests are typically associated with modifications of required yard setbacks, building heights, parking requirements, landscaping or buffering restrictions and related building or facility placement provisions.

The terms *appeal* and *variance* are often used interchangeably, but in fact are two entirely different concepts.

- A **variance**, if granted, allows a departure from a particular requirement of the zoning ordinance.
- An **appeal** is based on the fact that someone has made a decision related to the zoning ordinance, and another person disagrees with that decision.

8. Ethical Issues

Issues to consider in maintaining the public trust and insuring fairness in the process include (a) conflict of interest, (b) ex parte communications, and (c) Sunshine laws:

- A. **Conflicts of interest.** Bylaws should address the actions to take when there is a real or perceived conflict of interest. Some of the suggested actions are:

1. Declare the apparent conflict of interest. If a member is aware of a conflict prior to the meeting, the staff/chair should be notified in order to allow an alternate to be called. If an alternate is called in, he or she serves on that case until it is completed. Obviously, the local ordinance must provide for the availability of an alternate to be able to do that.
2. Generally, voting by the other members on a conflict of interest is not necessary. However, if the BZA adheres strictly to Robert's Rules of Order for all meeting procedures (not just conflicts), members should be excused through a vote. However, declaring a conflict of interest should not be used as a means of avoiding a difficult or uncomfortable decision.
3. Abstain from voting and do not participate in deliberations, either as a member of the BZA, or as a "citizen." Although no one can be prohibited from speaking as a "citizen," the comments from a fellow BZA member will likely be viewed by the audience as being very influential and have the appearance of bias. This does not prevent the member from being represented by an attorney, family member or friend.
4. Once the conflict is declared, you may wish (but have no obligation) to leave the room. This will be a clear indication to the audience that the member has no part in the deliberation or decision, and it avoids any perception by the audience that the member is attempting to influence the others. By all means, the member with a conflict should vacate his or her seat during all proceedings involving the case.
5. If you have a conflict of interest:
 - Don't discuss the proposal, either formally or informally with any of the other members.
 - Don't use inside knowledge and contacts. Make sure that minutes, staff materials, etc., are obtained through the same procedures as any other applicant. It is best to have someone else collect this information.
 - Don't represent yourself if you are the applicant. Have someone else perform that function. It is acceptable to have other family members, an attorney or a personal representative speak for you.
 - Guidance on issues of conflicts of interest can frequently be obtained from The Ohio Ethics Commission, sometimes as simply as going to the Commission's website <http://ethics.ohio.gov/>

B. *Ex parte* communication

Ex parte communications are communications that could be seen as an attempt to influence a decision-making official off the record and out of the presence of other parties.

Ex parte communication is defined as “an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by 5 USCS §§ 551.” (5 USCS § 551)¹⁵

¹⁵ Federal Register. Administrative Procedure Act (5 U.S.C. Subchapter II)

Sometimes these contacts are unavoidable and you should be clear on what your responsibilities are in this situation. If contacted outside the meeting, you may answer procedural questions, such as when and where the meeting will be held, but little else. You may politely listen and take notes. When you arrive at the meeting make sure you make the other members aware of the contact and what was discussed. Ultimately, the goal is to ensure that all members have the same information on which to base their decision.

Some communities have taken steps as of to spell out what is and how to handle *ex parte* communication i.e. City of Cincinnati's The Rules of Procedure for the Zoning Board of Appeals states:

Ex Parte Communication. Board members shall refrain discussing official matters of the Board with the public or with any applicant outside of the regularly scheduled meeting of the Board. No applicant shall discuss any official matter of the Board with any Board member outside of the regularly scheduled meeting of the Board. A Board member shall immediately report to the City Solicitor any instances or attempts of bribery, intimidation, retaliation or obstruction of official business (as those terms are defined by Chapter 29 of the Ohio Revised Code), or any other instances or attempts of *ex parte* communication or influence by an applicant or any other party.

C. Sunshine laws¹⁶

Sunshine laws are the laws in each state that govern public access to governmental records. These laws are sometimes known as open records laws or public records laws, and are also collectively referred to as FOIA laws, after the federal Freedom of Information Act. Government transparency is expanded with open meeting laws, which require meetings to be announced in advance and held publicly. The Ohio Open Meeting Law legislates the methods by which public meetings are conducted.

The **Ohio Open Records Law** is contained in Section 149.43 of the **Ohio Revised Code**. The law describes what records are available, what agencies are covered, what fees can be charged, who can ask for records, and so on.

Sunshine Laws Are Not Always Applicable to the Quasi-Judicial Deliberations of the BZA. At least some of the Sunshine Laws under Ohio Rev. Code § 121.22 and § 149.43 may not be applicable to quasi-judicial deliberations of the BZA. The full extent of these issues has not been completely decided by the courts but it is clear that the rules may have changed in the last 10 years. The Ohio Open Meetings Law at Ohio Rev. Code § 121.22 requires all public meetings to be held in the open and that all deliberations occur in public unless per a statutory exception in executive session. However, a series of cases and an Ohio Attorney General Opinion have now confirmed that a BZA hearing on a variance is not governed by § 121.22. While a

¹⁶ For a copy of the Ohio Sunshine Laws: An Open Government Resource Manual 2012, go to <https://www.documentcloud.org/documents/365121-ohio-sunshine-laws-an-open-government-resource.html>

hearing is required and the hearing must be open to the public, this is per the statute governing the variance process (i.e., Ohio Rev. Code § 519.15), {00915453 - 1} 14 not because of the Ohio Sunshine Laws. The BZA as a quasi-judicial body requires privacy to evaluate and resolve disputes, i.e., the BZA can deliberate in private. *See TBC Westlake, Inc.*, 81 Ohio St. 3d at 62. The Ohio Supreme Court held in a Tax Board of Revision case that a quasi-judicial body has the right, like a judicial body, to deliberate in private to allow it to contemplate the case free from litigant pressures, provides for open and candid discussions among the members of the board and its staff, and to allow the board to reach a sound decision. The Court in *Groff-Knight* applied this ruling to a BZA in a conditional use case. Since a variance hearing is also a quasi-judicial matter, the court reasoned this ruling extends to variance hearings as well.¹⁷

The votes by the BZA should be taken in public, even if there has been a private deliberation session.

A separate issue from the ability to deliberate in private is what information from the private deliberations must be made public as a “public record” under Ohio Rev. Code § 149.43(A)(1). A privilege known as the “**judicial mental process**” allows for certain materials and thoughts to be excluded from the definition of a “public record,” including a judge’s trial notes. The judicial mental process privilege is a state common law privilege that has been applied to BZA officers. A report written by an attorney-examiner given to a quasi-judicial body (the Board of Tax Appeals, or “BTA”) to assist in its decision making process was held to not be a public record under the judicial mental process privilege. This raises the question of whether the staff report ordinarily prepared by staff for the BZA is a public record. While many times these reports are shared with the applicant and interested parties, this is a question yet to be considered by the courts. The public records law will still apply to at least part of the variance process. The information about the public notice at the very least will be public. Where the line stops and starts however, like with regard to the staff report, remains to be seen. However, it is assumed that if the local government staff takes an adversarial position in its staff report to the Board, the report should be a public record accessible to the adversarial party and to others.¹⁸

9. Preparing for Meetings

Accepting membership on the BZA comes with certain responsibilities. One is to be informed and prepared when coming to a meeting. Another is to ensure that meetings are properly advertised and conducted in an efficient and professional manner. Consider the following in preparation:

¹⁷ Todd Hunt, June 25, 2010. *BZA: Powers and Duties – Variance Authority and Those Other Pesky Applications*. Page 13.
[http://planning.lakecountyoohio.gov/NEO%202010%20Presentations/Variance%20Authority%20and%20Other%20Pesky%20Applications%20\(Session%204A\).pdf](http://planning.lakecountyoohio.gov/NEO%202010%20Presentations/Variance%20Authority%20and%20Other%20Pesky%20Applications%20(Session%204A).pdf)

¹⁸ *Ibid.* Pages 14 and 15.

A. Information

- you must review all available and relevant information
- material should reach you early enough to allow adequate time to study and prepare

B. Public Hearing notices

- A public hearing notice is required for all applications.
- Notices may differ slightly i.e. published in a newspaper of general circulation, by mail to the owners, to those property owners within 300 feet of the property, to all occupants of all structures within 300 feet
- Notices shall be given not less than 15 days before the date the application will be considered for approval. (time may vary depending on the community's zoning ordinance)
- What should be included in a notice: (a)the nature of the request, (b) street address or other means of identification of the property considered, (c)when and where the request will be considered, (d) when and where written comments will be received

C. Site Visits

Visiting the site is a critical step in the decision making process.

A few tips to consider:

- Prior to the site visit you should review any site plans or sketches submitted as part of the application. This review will allow you to gain a proper perspective on the request and how it relates to surrounding properties and to the standards of review you are required to use to reach your decision.
- Visits should always be made individually rather than as a group because:
 - ❖ As a public meeting, it must be advertised and the requirements of the Americans With Disabilities Act (ADA) must be met.
 - ❖ Practically, it is hard for the visiting members to avoid talking among themselves about the proposal, which would be an ex parte issue.
- Do not go onto the site unless the property owner has granted specific written permission or unless the site is otherwise available to the public (such as an existing shopping center). This can be included as a permission statement on the application.
- Refusal by the applicant to allow you on the site should not influence your decision. Many people are concerned about liability or are simply determined to protect their privacy.
- If permission has not been granted, look for other ways to get the same information. This might include aerial photos or surveys that can be requested from the applicant. Permission to enter the property can be included as part of the application, giving the applicant the choice to allow entry or not.

- You may feel free to request information from the community's staff. Make sure whatever information you receive is also distributed to each of the other members. Similarly, written materials received by the members at home from applicants or others should be provided to the community's staff for distribution to the rest of the members.
- Do not talk to the property owner, neighbors or applicant outside of the meeting. See the ex parte discussion above. Simply and politely inform the individual of the bylaws of the board.
- If contact during the site visit cannot be avoided, it should be reported to the rest of the members during the meeting, along with the general content of the conversation.

D. Useful checklist as you are ready to leave for the meeting:

- ✓ Do you have your zoning ordinance and other applicable ordinances, if any?
- ✓ Have you examined the agenda and related materials including any staff reports and recommendations?
- ✓ Have you written down your questions?
- ✓ Have you completed the site visit? If not, at least drive by the site on the way to the meeting.
- ✓ Have you reviewed the standards that will be used for each decision?
- ✓ Remind yourself that the purpose of preparing for the meeting is not to make a decision; it is only to gather the information needed to prepare you for the decision that is to come. Keeping an open mind is important prior to making a decision.

10. Conducting Meetings

There are some very basic considerations for how a meeting should be conducted:

a. Being fair:

1. Everyone must have the opportunity to speak and present evidence.
2. Recognize and calm emotional responses (yours and the audience).
3. Listen for the speaker's message; what are they really trying to tell you?
4. You must represent the long term interests of the entire community, not just those present at a hearing.
5. Learn more about the neighborhood in which a request is pending. The public comments can help you in this regard.

b. Follow the rules:

i. Rules for speakers:

1. Direct comments to the chair
2. Limit speaking time and the number of times a person may speak, especially when there are many who wish to speak
3. Chair may ask if there is a spokesperson for the audience
4. It is perfectly appropriate for the Chair of the Board to suggest that individuals desiring to speak should avoid repeating what other witnesses have already said.
5. After the public hearing is closed it should remain closed and comments from the audience should only be at the request of a member/chair.

ii. Rules for BZA members:

1. All comments should be directed through the chair.
2. No private conferences prior to meeting.
3. Make all your comments aloud during deliberations – don't engage in side conversations.
4. Do not always attempt to answer every question – some don't really have answers.
5. If things get out of hand, take a recess.
6. Do not feel compelled to make a hasty decision – there is no need to make a decision on the night of the hearing if a majority of the members feel as though they need more information or time to digest the information presented at the hearing.
Some ordinances require that decisions be made within a particular amount of time after either an application has been filed or a hearing concluded. The Board should be careful to comply with those requirements. It is appropriate to ask the applicant to waive the time limit to allow for additional time to taken by the Board to consider the matter.
7. Always use the review standards of the zoning ordinance – this is the best way to avoid arbitrary and capricious decisions.

c. Meeting Minutes, Motions, Findings of Fact

If the decisions made are not properly documented, they can be challenged. Where a quasi-judicial hearing is taking place, as it should, on applications for variances or appeals or for conditional uses, some method must exist for later developing a verbatim transcript of the hearing. That can be done either by a high quality audio tape recording of the meeting or by having a court reporter there. Meeting minutes are not a substitute for a verbatim transcript. In the absence of a verbatim transcript, the side that appeals the hearing to the Court of Common Pleas will be entitled to a new trial. If there is a verbatim transcript and testimony has been taken under oath and subject to cross examination, it is likely that the court will refuse to consider any new evidence and will instead evaluate the Board's decision on the basis of the record in front of the Board, the transcript and evidence submitted.¹⁹

With the above discussion in mind, the task of keeping minutes should be taken seriously.

¹⁹ Tim Burke 1/11/2013

1. **Meeting minutes:** are to show the date, time, place, members present, members absent, any decisions made and all roll call votes taken. In general, minutes should contain enough detail so that a person not present can understand, such as:
 - What matters were discussed (the nature of the request, applicant, location); Receipt of any correspondence or other communications on the matter (including name and address, if known, and general content);
 - Who spoke at the meeting and the general content of his or her comments (including name and address);
 - What action was taken by the Board (including the motion, vote and any conditions attached to approved applications); and
 - Why an action was taken and how the standards of review of the zoning ordinance were or were not met, i.e., the detailed findings that support the decision.

One of the reasons that minutes are especially important has to do with the appeal procedure that occurs once the BZA has made its decision. As noted earlier, there are no other levels of review by the community itself after the board of zoning appeals. The next avenue of appeal is to the Common Pleas Court of the county in which the property is located.

The Common Pleas Court will usually decide an appeal on the basis of the record presented by the BZA and the applicant. In other words, the only information seen by the court will be the written record created at the BZA hearing. Accordingly, it is essential that the BZA provide a suitable written record of the proceedings.

The minutes are not official until approved by the BZA.

2. **About motions**

One of the important features of documenting decisions is the record of the action taken, as evidenced by the specific motion and vote. There are several essential elements of a motion:

- a maker and seconder;
- a description of the nature of the request;
- the action taken (approval, approval with conditions, denial, postponement of the decision);
- any conditions attached to affirmative decisions; and,
- the reasons for the action taken (the standards of review and how they were or were not satisfied) based upon the facts and evidence presented at the hearing – the findings that support the decision.
- **Hints about motions:**
 - ❖ Be sure everyone is clear on the motion by restating it. This should be done by the person who is writing down the motion, not just by the chair.

- ❖ Include specific references to the ordinance’s review standards
- ❖ Conditions attached to a decision should have a clear purpose: to ensure that the standards used to make the decision are met.
- ❖ If the motion includes the need for further action, it should state who will be responsible to see that action completed.
- ❖ Neither the maker nor the seconder is committed to voting favorably on the motion. The only purpose of a motion is to provide an opportunity for a vote.

3. Findings of Fact:

Findings of Fact are embodied in a concise statement of the action taken by the members of the board, and include the reasons for the decision, including the specific facts and evidence supporting the decision. In the absence of such findings, it may be quite difficult for a reviewing court to sustain the decision of the BZA.

The Findings, which are part of the minutes, are not official until reviewed and adopted by the BZA at the next meeting, or certified as approved at the same meeting. One reason this is important is that the applicant or other person disagreeing with the decision has a specific time limit in which to file an appeal to the circuit court (30 days). The clock on the time limit does not begin ticking until the minutes of the meeting at which the action was taken are officially approved.

If the BZA only meets on demand, or infrequently, another option would be to schedule a meeting after the minutes are completed to review and adopt them.

d. Post Decision Documentation

Once the decision is made, some administrative steps should be taken to help complete the record. The applicant and secretary of the BZA should each sign and date copies of the site plan or sketch submitted as part of the application. The applicant should keep one copy and the community at least one other. This provides a record of what was approved and when.

A copy of the minutes should be sent to the applicant following review by the approving bodies along with a letter specifically noting the action taken by the BZA, including any conditions placed on the approval, if appropriate.

This letter may include further instructions regarding the proposal. For example, if a variance was granted, the letter may state that a site plan approval by the planning commission is necessary prior to issuance of a building permit.

11. How to reach a proper decision

Proper decision making starts with the basics: knowledge of the zoning ordinance, knowledge of relevant case facts and using review standards to reach a decision.

A. *Knowledge of the Zoning Ordinance*

While it is not necessary for each member to know the intimate workings and details of a zoning ordinance, they must be familiar with the relevant parts of the ordinance when reviewing applications. But more important, it is essential that each member understands the purpose and need for the regulation being discussed.

One of the standards of review typically applied to variance requests asks that the decision not impair the intent and purpose of the ordinance. If the intent and purpose of the regulation would be materially affected, it is possible that the variance would not be appropriate. For example, one of the recognized purposes of a side yard setback is to provide access for safety personnel to the rear of a building. Should a variance be permitted that eliminates this access, the intent and purpose of the ordinance would not be fulfilled.

B. *Knowledge of Relevant Case Facts*

Facts are critical to good decision making. Sources of facts include:

- (a) The application and supporting materials;
- (b) The master plan or other relevant governmental plans;
- (c) Staff and agency reports regarding impacts on public services, natural resources, character of the area, traffic and parking, and others;
- (d) A visit to the site to see the physical characteristics of the property and adjacent parcels and;
- (e) Testimony and evidence presented at the public hearing

However, what is a fact is not always clear. Sometimes it will be necessary for the members to use their own experience and common sense.

C. *Use of Ordinance Standards*

Following an effective and consistent decision making process is one of the most important methods of supporting your decisions. Proper and consistent use of the standards of the zoning ordinance or other ordinances is essential. If all ordinance standards and state law standards are met, the application must be approved. Before any variance should be approved, the applicant should be required to demonstrate that either a *practical difficulty* or *unnecessary hardship* exists. While these terms are sometimes used interchangeably, they are, in fact, distinct and different terms.

- *Practical difficulty* is applied only to nonuse, or area/size variances (also known as dimensional variances);
- *Unnecessary hardship* is relevant only for use variances.

It is generally accepted that the unnecessary hardship demonstration should be the most difficult, given that a use variance has the potential for a greater effect than area variances, where the standard of proof is not as severe.

The wording and number of standards will often differ from one community to another, but the following standards have been considered by various court decisions and are common to ordinances.

D. Standards for Nonuse or Area/Size Variances²⁰

Granting of a nonuse variance requires the existence of a practical difficulty. The *factors* to be considered and weighed to determine whether a property owner has encountered practical difficulties are (but are not limited to) the following:

- i. whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- ii. whether the variance is substantial;
- iii. whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
- iv. whether the variance would adversely affect the delivery of governmental services (*e.g.*, water, sewer, garbage);
- v. whether the property owner purchased the property with knowledge of the zoning restrictions;
- vi. whether the property owner's predicament feasibly can be obviated through some method other than a variance; and
- vii. whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.

Duncan v. Middlefield (1986), 23 Ohio St.3d 83.

The *Duncan* opinion does not limit the analysis to only these seven factors. For example, municipalities have added such factors as: whether the property has unique physical characteristics - - *e.g.*, exceptional narrowness of the lot or irregular terrain; or whether the practical difficulty exists solely through the actions of the property owner. An appellate court in Ohio has, however, used the seven *Duncan* factors to uphold a zoning board's decision in spite of other standards in the municipal code that were different. *Budget Car Sales v. Village of Groveport BZA* (2002), Franklin Cty. App., No. 01AP-932, *unreported*. Also, these are only “factors” for establishing the right to an area or size variance and an applicant need not meet each and every factor. Conversely, the board hearing the case need not make factual findings as to each “factor” to support a decision to grant or deny a variance. *CarrollsCorp. v. BZA, City of Willoughby* (Lake Cty.), 2006 Ohio App. LEXIS 3379.

The BZA’s Reputation

A board of zoning appeals known for easy approvals may find itself barraged with variance requests. As the word spreads that the BZA grants almost any variance, the attitude among builders, attorneys, planners, and others who frequently advise property owners is, “Don’t bother trying to meet the zoning ordinance. All you need to do is apply for a variance and you will get it.”

²⁰ Todd Hunt, June 25, 2010. [BZA: Powers and Duties – Variance Authority and Those Other Pesky Applications](http://planning.lakecountyohio.gov/NEO%202010%20Presentations/Variance%20Authority%20and%20Other%20Pesky%20Applications%20(Session%204A).pdf). Page 4.
[http://planning.lakecountyohio.gov/NEO%202010%20Presentations/Variance%20Authority%20and%20Other%20Pesky%20Applications%20\(Session%204A\).pdf](http://planning.lakecountyohio.gov/NEO%202010%20Presentations/Variance%20Authority%20and%20Other%20Pesky%20Applications%20(Session%204A).pdf)

On the other hand, a busy BZA may be an indicator of a dated or even obsolete zoning ordinance. Taking an annual inventory of BZA actions may lead the community to parts of the ordinance that need refinement.

E. Standards for Use Variances

A use variance allows a use of land that is not permitted in the district in which the property is placed. Because this type of relief is so significant, granting of a use variance requires the existence of an unnecessary hardship.

Many codes/resolutions fail to make the distinction between "use" variances and variances for area and size regulations. The Ohio Supreme Court has clearly delineated between these types of variances and the standards that need to be applied when a zoning board adjudicates such variances. Use variances need to be adjudicated by zoning boards upon strict standards clearly delineated in the zoning code that constitute an "unnecessary hardship".²¹ Townships in Ohio need to be very careful in the adoption of standards or factors for variances since they are governed by Ohio Revised Code Chapter 519. The only standards set forth in Chapter 519 (§519.14) is the "unnecessary hardship" for authority to grant any type of variance.

1. The property could not be used (be put to a reasonable use) for the purposes permitted in that zone district.

The principle behind a use variance is that it is necessary because the property is not usable as it is zoned. Therefore, a thorough review is needed to first establish that none of the uses currently allowed in the district, either as permitted by right or through a conditional use, are appropriate for the property. While it is true that financial considerations are not generally the subject of review for variances, this standard may be satisfied by a finding that the property would essentially be valueless if an attempt were made to develop it as zoned.

Part of this review will require determining if the property can be reasonably used for any of the uses permitted in the district. This does not mean that the use has to be the most profitable, or the use proposed by the applicant. It only requires a finding that there are one or more uses permitted in the district which could reasonably be placed on the property.

2. The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.

This standard is generally similar to that for nonuse variances, particularly with respect to the necessity for having unique circumstances that are specific to a property and not related to the applicant's personal situation. The other important aspect is the requirement that the situation on the property not be common in the area. If conditions are common to the area, a use variance

²¹ Todd Hunt, June 25, 2010. BZA: Powers and Duties – Variance Authority and Those Other Pesky Applications. Page 16.
[http://planning.lakecountyoohio.gov/NEO%202010%20Presentations/Variance%20Authority%20and%20Other%20Pesky%20Applications%20\(Session%204A\).pdf](http://planning.lakecountyoohio.gov/NEO%202010%20Presentations/Variance%20Authority%20and%20Other%20Pesky%20Applications%20(Session%204A).pdf)

would not be appropriate because the area should be reviewed by the planning commission to determine if the zoning for the entire area should be changed. But that is the function of the planning commission and not that of the board of zoning appeals.

3. The use would not alter the essential character of the area or adjoining properties would not suffer a substantial detriment as a result of the variance.

Probably the most difficult aspect of this standard is determining what the essential character of an area is, and if the use variance is approved, what effect might the variance have on that character.

What is the “area” affected by a use variance?

The “area” which may be affected by a use variance will depend on the nature of the request and the size of the property that is the subject of the requested use variance. For example, a small residential lot requesting a use variance for an office will affect a smaller area than a request on a large site for an intensive commercial use.

One of the easiest ways to determine the essential character of an area is through a site visit to examine the area and see the various land uses that exist.

In some cases the character may be evidenced simply by the dominance of one land use over any others. In others it may not be as obvious. For example, some areas may have a wide variety of uses. Viewing the area may not lead directly to a conclusion as to the character of the area and may require some degree of judgment.

Another way to determine the character of an area and the possible effect of a use variance is to examine the community’s master plan. The plan may clearly indicate the existing or intended character of an area. The BZA may also seek the advice of the planning commission to help interpret the master plan, or to provide guidance when there is no plan or if it is out-of-date. Any opinion of the commission is simply advice, and should be considered only as input to the BZA’s deliberations.

After determining the essential character, the next step is to evaluate whether or not approval of the use variance would alter that character. This decision might hinge on whether or not the proposed use variance may tip the scales in one direction or another. If an area appears to be in transition from a residential to commercial area, for example, a commercial use variance may be appropriate. However, if the specific character of the area is unclear, a use variance may not be appropriate since it could tend to establish a specific character. This type of decision will require the exercise of discretion by members of the BZA, as assisted by staff and consultants.

4. The problem is not self-created.

This standard is essentially the same as that for nonuse variances. If the applicant created a particular situation that made a property essentially unusable as zoned, that applicant would not be entitled to relief by approval of a use variance. For example, if a property

owner subdivides a large, residentially zoned property, leaving a corner lot as an isolated parcel, an argument that the parcel should only be used for nonresidential purposes could fail because the parcel was created by the direct action of the applicant.

5. *The variance would not adversely affect the delivery of governmental services, for example water, sewer, garbage.*²²

Normally, this would only apply if a use variance was requested that would significantly increase the intensity of the use of property beyond that possible under the existing zoning use provisions.

6. *The applicant purchased the property without knowledge of the zoning restriction*²³

If this standard was applied to every case, few variances would ever be granted. But, since *Duncan* did not intend for every standard to be met, this standard can be considered but should not necessarily be fatal to the decision.

7. *The applicant's predicament feasibly cannot be resolved through some method other than a variance.*²⁴

This standard can have more than one outcome. First, the BZA might consider what options the applicant would have that would not require a variance. In other words, the need for the variance should not simply be a matter of inconvenience, but should have real and substantial considerations that would preclude the applicant from complying with the applicable zoning provision.

Next, there are instances where a more appropriate approach would be to amend the ordinance, rather than granting multiple variances. This is true in those instances where the BZA sees multiple variances for the same provision in the same zoning district.

8. *The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.*²⁵

As noted earlier, the separate provisions of the zoning ordinance are intended to accomplish specific purposes. Any variance that would interfere with the intent of that provision should not be granted. On the other hand, the provisions should not unfairly burden a single property owner from being able to enjoy the rights commonly held by other owners in similar situations.

What about precedents?

One of the concerns often expressed by BZA members is the fear that by approving or not approving a request they may be setting or violating a precedent. This concern can be real if the BZA is not using the standards of review of the zoning ordinance. Failure to use these standards consistently means the BZA is simply making up the rules as they go. As a result, future applicants gain the right to be

²² Todd Hunt, 2010. BZA: Powers and Duties-Variance Authority and Those Other Pesky Applications. Page 20

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

judged by the same considerations used by the BZA in previous applications.

Consequently, the way to avoid setting a precedent is to base every decision on the standards of review of the zoning ordinance, and include findings of fact that distinguish cases from one another. When the standards are used and findings made consistently, the BZA is less likely to be bound by past decisions because the facts of each case are different. On the other hand, where the facts are very similar the same decision should be reached, not because of a precedent but because the same facts were applied against a consistent set of review standards.

Therefore, consistent and faithful use of the review standards for variances allows the BZA to reach decisions based on the facts of each individual case. This, together with the detailed findings of fact, helps ensure consistency and fair treatment for every applicant by avoiding the "arbitrary and capricious" labels often given to zoning decisions that are not well supported.

As each application is debated, each of the applicable standards should be specifically reviewed and individual findings made for each. No approvals should be granted until the members clearly agree that all the appropriate standards of review are satisfied (noting that *Duncan* did not require adherence to all standards). Zoning decisions are permanent. Care must be taken to ensure that each decision is well supported. It is essential that the decisions are well documented and that the records pertaining to all applications are complete.

12. In Conclusion²⁶

In the end, decisions can rarely be judged to be right or wrong. Usually only time and development outcomes decide that. But having adequate information, being prepared and using review standards can help the BZA make informed decisions.

Worried about having a decision challenged in court? The short answer to avoiding litigation is simple – you can't. But you can strengthen the position of the BZA's decision should it be challenged by following standard decision making processes and proper procedures. Some elements of defensible procedures are:

1. *Notice*

Notice should be adequate and timely. It should be reasonably calculated to apprise interested parties of a proposed action and afford them an opportunity to present their objections. The average person must be able to understand the notice. It must allow sufficient time for interested parties to prepare.

²⁶ This section sums up the information and tips shared in the previous pages. It has been crafted by Steve Langworthy and expanded with a short list of procedures and tips by Greg Dale, 2011, [Anderson Township BZA training](#)

2. Opportunity To Be Heard

All parties interested in a proposed action must have the opportunity to be heard and present evidence to support their position. Hearings must be open to the public. Have rules for managing testimony – discourage repetitive testimony, encourage relevant, factual testimony, enforce time limits, etc.

3. Full Disclosure

All parties must have full access to information, statements and evidence relied upon by decision-makers to make their decision. Ex parte communications should be avoided. Avoid acting on information received at the last minute. All members should have the same information on which to base their decisions.

4. Findings

Findings are the legal "footprints" that should be left in administrative proceedings to explain how the decision-maker progressed from the facts through established policies to the decision.

5. Unbiased Decisions

The decision-maker should be clear of bias or prejudice. Conflicts of interest or apparent conflicts of interest must be identified and appropriately addressed as determined by the bylaws

6. Timely Decisions

Decisions should be made within a reasonable period of time. The decision-maker must avoid using the zoning process as a delaying tactic.

7. Complete Records

A full and clear record must be kept of the proceedings, including not just the deliberation of the decision-makers, but also all evidence which is offered and relied upon by the decision-makers.

8. Clear Rules

Rules for the proceedings should be set out clearly in advance and followed.

Tips for Findings of Facts

Remember:

- *You are not trying to decide whether you “like” a proposal*
- *You should try to put aside your own biases*
- *Your decisions must be based on facts – keep focused on relevant facts*
- *The facts must address the standards*
- *Information is not the same thing as "facts"*
- *Weighing of the evidence is your responsibility*
- *You do not have to believe everything you hear*
- *The burden of proving the need for the variance is on the applicant*

Try to:

- *Come to the meeting prepared*
- *Use the staff report as a starting point – but feel free to disagree with appropriate reasons*
- *Announce the rules in advance – control the meetings – manage rebuttals*
- *Encourage factual testimony*
- *Have the standards in front of you and refer to them throughout the discussion*
- *Ask questions designed to get evidence related to the standards*
- *Limit personal comments and side conversations*
- *Keep the evidence/ hearing phase separate from the deliberation phase – know when to close the public hearing*
- *Deliberate the facts as they apply to the review standards- state the facts clearly and demonstrate how they relate to the review standards*
- *Make sure motions are properly worded and include stated reasons for the decisions*
- *Specify reasonable conditions where necessary to achieve compliance with the review standards*
- *Prepare minutes carefully*
- *Have a complete record of the application, that:*
 - *Accurately describes the hearing*
 - *Lists the standards*
 - *Reflects a weighing of evidence*
 - *Determines compliance*
 - *Clearly states the decision with any conditions*

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City of Richmond (Michigan) Board of Zoning Appeals By-Laws and Rules of Procedures <http://www.cityofrichmond.net/bzabylaws.pdf>

Relevant legislation:

Ohio Revised Code Provisions for Administrative Appeals

§ 2506.03 Hearing of appeal.

(A) The hearing of an appeal taken in relation to a final order, adjudication, or decision covered by division (A) of section 2506.01 of the Revised Code shall proceed as in the trial of a civil action, but the court shall be confined to the transcript filed under section 2506.02 of the Revised Code unless it appears, on the face of that transcript or by affidavit filed by the appellant, that one of the following applies:

- (1) The transcript does not contain a report of all evidence admitted or proffered by the appellant.
- (2) The appellant was not permitted to appear and be heard in person, or by the appellant's attorney, in opposition to the final order, adjudication, or decision, and to do any of the following:
 - (a) Present the appellant's position, arguments, and contentions;
 - (b) Offer and examine witnesses and present evidence in support;
 - (c) Cross-examine witnesses purporting to refute the appellant's position, arguments, and contentions;
 - (d) Offer evidence to refute evidence and testimony offered in opposition to the appellant's position, arguments, and contentions;
 - (e) Proffer any such evidence into the record, if the admission of it is denied by the officer or body appealed from.
- (3) The testimony adduced was not given under oath.
- (4) The appellant was unable to present evidence by reason of a lack of the power of subpoena by the officer or body appealed from, or the refusal, after request, of that officer or body to afford the appellant opportunity to use the power of subpoena when possessed by the officer or body.
- (5) The officer or body failed to file with the transcript conclusions of fact supporting the final order, adjudication, or decision.

(B) If any circumstance described in divisions (A)(1) to (5) of this section applies, the court shall hear the appeal upon the transcript and additional evidence as may be introduced by any party. At the hearing, any party may

call, as if on cross-examination, any witness who previously gave testimony in opposition to that party.

Cities and villages (incorporated areas / municipalities) in Ohio have the authority to administer zoning. They must do this according to the Ohio Revised Code (ORC) unless they have adopted a charter, which can give the municipality broader zoning and other powers. Charter communities may fashion zoning regulations that vary from (but cannot violate) the ORC. [713.06 Division of municipal corporation into zones.](#) , [713.10 Basis of districting or zoning - classification of buildings and structures.](#), [713.11 Administrative board - powers and duties.](#), [713.12 Zoning regulations notice and hearing.](#), [713.15 Nonconforming uses.](#)

Zoning in Townships <http://codes.ohio.gov/orc/519>

Chapter 519: Township zoning – agriculture define

519.02 Board of township trustees may regulate location, size and use of buildings and lands in unincorporated territory.

519.04 Township zoning commission

519.13 Township board of zoning appeals

519.14 Powers of township board of zoning appeals

519.13 Township board of zoning appeals.

In any township which adopts zoning regulations the board of township trustees shall appoint a township board of zoning appeals composed of five members who shall be residents of the unincorporated territory in the township included in the area zoned. The board of township trustees may appoint two alternate members to the township board of zoning appeals, for terms to be determined by the board of township trustees. An alternate member shall take the place of an absent regular member at any meeting of the board of zoning appeals, according to procedures prescribed by resolution by the board of township trustees. An alternate member shall meet the same appointment criteria as a regular member. When attending a meeting on behalf of an absent member, the alternate member may vote on any matter on which the absent member is authorized to vote. The terms of all regular members shall be of such length and so arranged that the term of one member will expire each year. Each regular or alternate member shall serve until the member's successor is appointed and qualified. Members shall be removable for the same causes and in the same manner as provided by section [519.04](#) of the Revised Code. Vacancies shall be filled by the board of township trustees and shall be for the unexpired term. The members may be allowed their expenses, or such compensation, or both, as the board of township trustees may approve and provide.

The board of zoning appeals may, within the limits of the moneys appropriated by the board of township trustees for the purpose, employ such executive, professional, technical, and other assistants as it considers necessary.

Effective Date: 07-22-1998

519.14 Powers of township board of zoning appeals.

The township board of zoning appeals may:

- (A) Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of sections [519.02](#) to [519.25](#) of the Revised Code, or of any resolution adopted pursuant thereto;
- (B) Authorize, upon appeal, in specific cases, such variance from the terms of the zoning resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done;
- (C) Grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution. If the board considers conditional zoning certificates for activities that are permitted and regulated under Chapter 1514. of the Revised Code or activities that are related to making finished aggregate products, the board shall proceed in accordance with section [519.141](#) of the Revised Code.
- (D) Revoke an authorized variance or conditional zoning certificate granted for the extraction of minerals, if any condition of the variance or certificate is violated.

The board shall notify the holder of the variance or certificate by certified mail of its intent to revoke the variance or certificate under division (D) of this section and of the holder's right to a hearing before the board, within thirty days of the mailing of the notice, if the holder so requests. If the holder requests a hearing, the board shall set a time and place for the hearing and notify the holder. At the hearing, the holder may appear in person, by the holder's attorney, or by other representative, or the holder may present the holder's position in writing. The holder may present evidence and examine witnesses appearing for or against the holder. If no hearing is requested, the board may revoke the variance or certificate without a hearing. The authority to revoke a variance or certificate is in addition to any other means of zoning enforcement provided by law.

In exercising the above-mentioned powers, the board may, in conformity with such sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end has all powers of the officer from whom the appeal is taken.

Effective Date: 07-22-1974; 04-06-2007

519.15 Rules, meetings and procedures of board.

The township board of zoning appeals shall organize and adopt rules in accordance with the zoning resolution. Meetings of the board of zoning appeals shall be held at the call of the chairperson, and at such other times as the board determines. The chairperson, or in the chairperson's absence the acting chairperson, may administer oaths, and the board of zoning appeals may

compel the attendance of witnesses. All meetings of the board of zoning appeals shall be open to the public. The board of zoning appeals shall keep minutes of its proceedings showing the vote of each regular or alternate member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board of township trustees and be a public record.

Appeals to the board of zoning appeals may be taken by any person aggrieved or by any officer of the township affected by any decision of the administrative officer. Such appeal shall be taken within twenty days after the decision by filing, with the officer from whom the appeal is taken and with the board of zoning appeals, a notice of appeal specifying the grounds. The officer from whom the appeal is taken shall transmit to the board of zoning appeals all the papers constituting the record upon which the action appealed from was taken.

The board of zoning appeals shall fix a reasonable time for the public hearing of the appeal, give at least ten days' notice in writing to the parties in interest, give notice of such public hearing by one publication in one or more newspapers of general circulation in the county at least ten days before the date of such hearing, and decide the appeal within a reasonable time after it is submitted. Upon the hearing, any person may appear in person or by attorney.

Effective Date: 07-22-1998

Duncan v. Middlefield

In Ohio, a set of 7 guidelines are prescribed for officials and courts to employ in fairly and equitably considering how to gauge practical difficulties. These are informally referred to as the **Duncan Criteria or Duncan Factors** and are enshrined in *Duncan v. Middlefield* (1986), 23 Ohio St. 3d 83:

1. Whether the property in question will yield a reasonable return or whether there can be beneficial use of the property without the variance;
2. Whether the variance is substantial;
3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
4. Whether the variance would adversely affect the delivery of governmental services;
5. Whether the property owner purchased the property with knowledge of the zoning restriction;
6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Quiz



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Quiz

You DO NOT have to turn this quiz in. Go ahead and test your knowledge. Some of these questions and possible answers will prompt more questions. Make sure you discuss them with your fellow commissioners and presenters at the training session.

Please Circle the Correct Answer

1. Which local body is designated by state law as the local body that is authorized to hear property owners seeking relief from a zoning standard:
 - a. The planning board
 - b. The zoning board of appeals
 - c. A special board established by the local legislature
 - d. The local legislature (Board of Trustees or Council)
2. Every township, city and village in the State of Ohio must appoint a board of zoning appeals
 - a. True
 - b. False
3. A Planning Commission or a Zoning Commission in a county or a township can assume the duties of the Board of Zoning Appeals.
 - a. True
 - b. False
4. A Planning Commission or a legislative body (elected officials) in cities and villages can act as the Board of Zoning Appeals.
 - a. True
 - b. False
5. The role of the Board of Zoning Appeals is:
 - a. Interpret the zoning ordinance (map and text)
 - b. Deciding appeals from an administrative decision on zoning matters
 - c. Grant variances
 - d. Grant special permits
 - e. Re-write the zoning ordinance
 - f. Amend the land use plan
 - g. All of the above
 - h. Only ____, ____, ___and ____,
6. A variance that is typically associated with modifications of required setbacks, building heights, parking requirements, landscaping or buffering restrictions is known as
 - a. Use variance
 - b. Nonuse variance
7. The factors to be considered and weighed to determine whether a property owner has encountered practical difficulties are the result of case law
 - a. Duncan v. Middlefield (1986)
 - b. Village of Euclid v. Ambler Realty Co.(1926)

8. A variance runs with the land
 - a. True
 - b. False

9. A prior non-conforming use
 - a. Runs with the land
 - b. May run with the land, but may be discontinued or deemed abandoned
 - c. All of the above
 - d. None of the above

10. Where do you find the rules for conducting BZA meetings?
 - a. In the Zoning Ordinance
 - b. In the BZA Bylaws
 - c. In the ORC
 - d. In the community's website
 - e. All of the above
 - f. Only ____, ____, ____

11. A concise statement of the action taken, that includes the specific facts and evidences for the decision, is called:
 - a. Minutes
 - b. Findings of Fact
 - c. Notice

12. To make a decision, does it matter if the BZA agrees or disagrees with a provision in the Zoning Ordinance?
 - a. Yes
 - b. No

13. Should a member of a BZA visit the site before a hearing?
 - a. Yes
 - b. No

14. Ohio Sunshine Laws and the quasi-judicial Deliberations of the BZA
 - a. Are always applicable
 - b. Are NOT always applicable

15. A Board of Zoning Appeals known for easy approvals is
 - a. Popular with developers
 - b. Undermining the zoning ordinance
 - c. Showing the zoning ordinance is obsolete
 - d. All of the above
 - e. None of the above

16. How long do you have to appeal a BZA decision?
 - a. Thirty days
 - b. No time limit

17. What can make a decision by the Board of Zoning Appeals defensible, if challenged on procedures?
- a. Notice
 - b. All parties involved have the opportunity to be heard
 - c. Full disclosure
 - d. Findings of Facts
 - e. Unbiased decisions
 - f. Timely decisions
 - g. Complete records
 - h. Clear rules
 - i. All of the above
 - j. None of the above
 - k. Only ____, ____, ____, ____, and ____
18. If an applicant is not satisfied with a decision by the BZA, where can she/he appeal?
- a. City Council
 - b. Board of County Commissioners
 - c. Courts
 - d. Nowhere, BZA has the last word

Answers to the Quiz

- 1. b
- 2. b (only those with zoning)
- 3. b
- 4. a
- 5. a, b, c, d (conditional uses)
- 6. b (size/area variances)
- 7. a
- 8. a
- 9. b
- 10. e (assuming the community has a website)
- 11. b
- 12. b
- 13. a
- 14. b
- 15. c
- 16. a
- 17. i
- 18. c

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Slide Presentation



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BOARD OF ZONING APPEALS MEMBERS WORKSHOP

PRESENTED BY:



Principal Functions

- To hear and decide **appeals** of administrative decisions made in implementing the zoning ordinance
- To hear and decide requests for **variances** from the strict terms of the zoning ordinance
- To hear and decide requests for **conditional uses** in counties and townships (and sometimes in municipalities)

Relationship to other bodies

- Legislative body
- Planning commission
- Zoning administrator

What quasi-judicial means

- Emphasis on record based decisions
- Higher procedural requirements
 - Swearing in witnesses
 - Allowing cross examination
 - Written findings of facts
 - No ex-parte contacts
 - Ability to produce a verbatim transcript
- Decision appealable directly to Common Pleas Court (exceptions in some municipalities that allow appeals to city council)

What's the difference

- Variance
- Prior non conforming uses

Let's talk VARIANCES

- “use” variance (unnecessary hardship standard)
 - Stems from unique condition of property
- “non-use” [area/size variance] variance
 - Practical difficulties per Duncan v. Middlefield (1986)

“Use” Variance

- Standards for determining:
 - Hardship not created by applicant
 - Not adversely affect adjacent owners
 - Not adversely affect public health, safety or general welfare
 - Consistent with general spirit and intent of code
 - Minimum relief to applicant
 - No other economically viable use permitted

Alternatives to Variance Requests

- Zoning Changes
- Declaratory Judgment Actions

Elements of Defensible Procedures

- Notice
- Opportunity To Be Heard
- Full Disclosure
- Findings
- Unbiased Decisions
- Timely Decisions
- Complete Records
- Clear Rules

Findings of Fact

- Findings of Fact and Conclusions of Law
- Tips for Finding the Findings

Additional topics:

- Unnecessary hardship vs. practical difficulties
- Conditions applied on a variance
- Rehearings by BZA and Judicial Review of Decision by BZA
- Examples/Case studies

QUIZ

Review

**Planning
Partnership**



HAMILTON COUNTY
Regional
Planning
Commission

Hamilton County Regional Planning Commission

Planning Partnership

County Administration Building

138 E. Court Street

Cincinnati OH 45202

Phone 513-946-4455

www.planningpartnership.org

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Samples



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Hamilton County, Ohio

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Hamilton County, Ohio Planning, Zoning and Community Development

Board of Zoning Appeals

[Board Members](#) | [Contact Information](#) | [Schedule of Fees](#) | [Submission Deadlines & Meeting Dates](#)

Established in 1949, the Board of Zoning Appeals (BZA) serves Hamilton County by hearing cases related to appeals, variance, nonconforming uses, compatible nonconforming uses and conditional uses as outlined in the [Zoning Resolution](#).

Board Members

The Board of Zoning Appeals consists of 5 Board Members, appointed by the County Commissioners, who must be residents of the unincorporated territory of Hamilton County included in the area zoned. The Board Members terms are for a 5 year time period and are staggered so that one Board Members term expires each year. The Board Member is either reappointed or replaced by the Board of County Commissioners. Vacancies are filled by the County Commissioners and are for the unexpired term of the prior Board Member. Currently, along with the 5 Board Members, there are 2 alternate Board Members to fill in for the regular Board Members due to illness, vacations etc. At the last meeting of the year, a Chairman and Vice-Chairman are nominated by the Board Members. The Chairman presides over the meeting though out the year and the Vice-Chairman would preside should the Chairman be absent or excused from a particular meeting. Board of Zoning Appeals meetings are held once a month.

Board Members:

- Dave Beck was appointed to the Board on August 14, 2002 for the unexpired term of Dave Bates. His current term expires on December 11, 2015. Mr. Beck is a production manager and a resident of Miami Township.
- J. Dale Proffitt was appointed to the Board on December 11, 2009. His term will expire on December 11, 2014. Mr. Proffitt is a business owner and a resident of Green Township.
- Peggy Roudebush was appointed to the Board on January 25, 1995. Her current term expires on December 11, 2016. Mrs. Roudebush is a business owner and a resident of Harrison Township.
- Dan Spraul was appointed to the Board on April 1, 1996. His current term will expire on December 11, 2012. Mr. Spraul is an attorney and a resident of Green Township.
- Bill Vitale was appointed to the Board on November 29, 2000. His current term will expire on December 11, 2013. Mr. Vitale is a real estate agent and a resident of Columbia Township.

Alternate Members:

- Mark Rosenberger was appointed as an "Alternate" member on December 11, 2009. His term will expire on December 11, 2014. Mr. Rosenberger is a land surveyor and a resident of Miami Township.

- **Contact Information**

-

The Board of Zoning Appeals is supported by staff of the Planning & Development department who administer the day to day duties of the office.

Address: 138 E. Court Street, Room 801
Cincinnati, OH 45202
PH: (513) 946-4550

User Guides and Applications

[Appeals](#) | [Compatible Nonconforming Uses](#) | [Conditional Uses](#) | [Nonconforming Uses](#) | [Variances](#)

Appeals

[Chapter 22 of Zoning Resolution \[pdf\]](#)

The BZA has the authority to hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an administrative official in the enforcement of the Zoning Resolution.

Traditionally, appeals are heard based upon a letter from the Zoning Field Inspector where it is alleged that there are violations of the Zoning Resolution. These violations range from new construction being done on a property without Zoning Certificates and or Building Permits to the parking/storage of cars, boats etc.

Applications for appeals shall include the following:

1. BZA application (filled out completely)
2. Appeals Checklist
 - a. Letter of explanation concerning appeal
 - b. Site plan(s) of the property as specified in the Appeals Checklist (Optional)
 - c. Elevation drawings as specified in the Appeals Checklist (Optional)
3. Application fee (as established by Zoning Resolution "Schedule of Fees")

Compatible Nonconforming Uses

[Chapter 9 of Zoning Resolution \[pdf\]](#)

The compatible nonconforming use procedure is the process through which an established nonconforming use, legally on file with the Hamilton County Rural Zoning Commission, may be expanded or improved through a public hearing process. The Board of Zoning Appeals may permit such expansion after having determined that the nonconforming use is compatible or can be made compatible, and will have no adverse impact upon the adjacent property owners or other permitted land uses in the surrounding neighborhood.

Applications for Nonconforming Uses shall include the following:

1. BZA Application (filled out completely)
2. Compatible Nonconforming Use Checklist
 - a. Letter of explanation concerning the compatible nonconforming use proposal
 - b. A copy of the nonconforming use registry card
 - c. Surveyor sealed site plan(s) of the property as specified in the Compatible Nonconforming Use Checklist
3. Application Fee (as established by Zoning Resolution "Schedule of Fees")

Conditional Uses

[Chapter 17 of Zoning Resolution \[pdf\]](#)

Conditional Uses are those uses having some special impact or uniqueness which require a careful review of their location, design, configuration and special impact to determine, against fixed standards, the desirability of permitting their establishment on a given site. The Conditional Use section has a broad spectrum of uses in all districts ranging from the placement, construction and location of a fence to the construction, location and use

of churches, schools and telecommunication towers.

The Conditional Use chapter includes provisions/requirements for telecommunication towers located in a residential district.

Applications for appeals shall include the following:

1. BZA Application (filled out completely)
2. Conditional Use Checklist
 - a. Letter of explanation concerning the conditional use
 - b. Site plan(s) of the property as specified in the Conditional Use Checklist
3. Application Fee (as established by Zoning Resolution "Schedule of Fees")

Nonconforming Uses

[Chapter 9 of Zoning Resolution \[pdf\]](#)

A nonconforming use is the lawful use of any land, building, or structure, on the initial effective date of the Hamilton County Zoning Resolution or any amendment thereto, which is not permitted as-of-right, as a conditional use or as a planned unit development, under the zoning resolution or any amendment thereto in the district in which it is situated. So long as no structural alterations are made, the property may be sold. Following the issuance of a zoning certificate, the use may be changed to another nonconforming use of the same use classification or a more restricted use, permitted as-of-right in the zone district.

A record of nonconforming uses was established in 1949 and is on file in the Hamilton County Rural Zoning Commission. In the event that a property owner requests the issuance of a nonconforming use certificate, where no record of the nonconforming use previously existed, the legal recognition of that nonconformity must be established thru the nonconforming use public hearing process.

Applications for Nonconforming Uses shall include the following:

1. BZA Application (filled out completely)
 - a. Letter of explanation concerning the nonconforming use
 - b. Tax or business records, affidavits or other similar records establishing that the use was in existence prior to zoning or prior to amendment that prohibited such use
2. Site plan(s) of the property including parcel dimensions as well as the location, dimensions and use of each structure located on the property.
3. Application Fee (as established by Zoning Resolution "Schedule of Fees")

Variances

[Chapter 21 of Zoning Resolution \[pdf\]](#)

The variance procedure is intended to provide a means by which relief may be granted from unforeseen particular applications of the Zoning Resolution that create practical difficulties or particular hardships.

Applications for Variances shall include the following::

1. BZA Applications (filled out completely)
2. Variance Checklist
 - a. Letter of explanation concerning requested variance
 - b. Site plan(s) of the property as specified in the Variance Checklist
 - c. Elevation drawings as specified in the Variance Checklist
3. Application fee (as established by Zoning Resolution "Schedule of Fees")

Planning, Zoning & Community Development

138 East Court Street, Room 801, Cincinnati, OH 45202
Ph: 513 946-4550 Fx: 513-946-4475

Board of Zoning Appeals

[Board Members](#) | [Contact Information](#) | [Schedule of Fees](#) | [Submission Deadlines & Meeting Dates](#)

Established in 1949, the Board of Zoning Appeals (BZA) serves Hamilton County by hearing cases related to appeals, variance, nonconforming uses, compatible nonconforming uses and conditional uses as outlined in the [Zoning Resolution](#).

User Guides and Applications

[Appeals](#) | [Compatible Nonconforming Uses](#) | [Conditional Uses](#) | [Nonconforming Uses](#) | [Variances](#)

Appeals

[Chapter 22 of Zoning Resolution \[pdf\]](#)

The BZA has the authority to hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an administrative official in the enforcement of the Zoning Resolution.

Traditionally, appeals are heard based upon a letter from the Zoning Field Inspector where it is alleged that there are violations of the Zoning Resolution. These violations range from new construction being done on a property without Zoning Certificates and/or Building Permits to the parking/storage of cars, boats, etc.

Applications for appeals shall include the following:

1. BZA application (filled out completely)
2. Appeals Checklist
 - a. Letter of explanation concerning appeal
 - b. Site plan(s) of the property as specified in the Appeals Checklist (Optional)
 - c. Elevation drawings as specified in the Appeals Checklist (Optional)
3. Application fee (as established by Zoning Resolution "Schedule of Fees")

[BZA Application \[pdf\]](#)

[Appeals User Guide and Checklist \[pdf\]](#)

Contact Us

Phone & Email Listing

NEW! *Development Regulations Analysis for Energy Efficiency and Sustainability*

NEW! *Hamilton County Sustainable Development and Building Code Project Training Manual*

Applications

Zoning Certificate Application Form

All forms, fee schedules & worksheets

Planning, Zoning & Community Development

138 East Court Street, Room 801, Cincinnati, OH 45202
Ph: 513 946-4550 Fx: 513-946-4475

Zoning Permits and Enforcement

[Zoning District Summary \[pdf\]](#) | [Zoning Enforcement](#) | [Zoning Forms](#) | [Zoning Permit Users Guide](#) | [Zoning Resolution](#) | [Symmes Township Zoning](#)

The Zoning Resolution

for the Unincorporated Territory of Hamilton County, Ohio is available in Adobe Acrobat format for viewing online or to download. Download the files for better performance and increased search capabilities.

- [View the Zoning Resolution online](#) (with revisions effective December 10, 2010 with fees updated for 2012.)NOTE: This is a large download (6.1 MB). A delay may occur while the file is loaded.
- [Download the Zoning Resolution optimized for searching \(self extracting EXE file\)](#) (with revisions effective December 10, 2010 with fees updated for 2012.)



PLEASE NOTE: We recommend that you download the **CURRENT VERSION** of the FREE Adobe Reader to take advantage of the included index which greatly increases the speed of searches of the document. [Simply click here to download your free copy.](#)

Download and Installation Instructions for Self Extracting EXE Files

(print this page as a reference when downloading) Disk space Required: 9.5 MB (24 MB required for installation prior to the deletion of a temporary file) Platforms: Windows (All Versions)

1. Click the "Download the Zoning Resolution" link above and save the file to your computer as "HCZONING.EXE".
2. After the download, run the program "HCZONING.EXE".
3. Select the "Unzip" option
4. When notified that the Unzip was successful, select "Close"
5. Delete "HCZONING.EXE"
6. Create a shortcut to the file "C:\HCZONING\HCZonRes.pdf".

Zoning Maps

Zoning maps for areas under Hamilton County Rural Zoning Commission jurisdiction can be downloaded from the [Data Center Map Shop](#).

For an interactive Hamilton County map, visit the [CAGIS Internet Map Server](#).

Contact Us

Phone & Email Listing

NEW! *Development Regulations Analysis for Energy Efficiency and Sustainability*

NEW! *Hamilton County Sustainable Development and Building Code Project Training Manual*



HAMILTON COUNTY ZONING RESOLUTION
USER'S GUIDE

Variances

HAMILTON COUNTY

Board of Zoning Appeals

138 E COURT ST RM. 801
CINCINNATI, OH 45202-1224

GENERAL INFORMATION

Phone: (513) 946-4550
Fax: (513) 946-4475

Board Members

Dave Beck
J. Dale Proffitt
Peggy Roudebush
Daniel G. Spraul
Bill Vitale
Mark Rosenberger, Alternate

**Secretary/
Executive Director**

Bryan Snyder, AICP

**Board of
County Commissioners**

Greg Hartmann
Chris Monzel
Todd Portune

County Administrator

Christian Sigman

**Planning & Development
Executive Director**

Gary VanHart, P.E.

**Planning & Zoning
Director**

Todd Kinskey, AICP

• **What is a Variance?**

The variance procedure is intended to provide a means by which relief can be granted from unforeseen particular applications of this Resolution that create practical difficulties or unnecessary hardships on property in the county. The Board of Zoning Appeals is authorized only to vary the yard and bulk requirements or to reduce the number of off-street parking spaces required for a new use by not more than 25% or loading spaces by not more than 1 space. When a variance is requested due to the change of use or increase in intensity of an existing structure, the number of off-street parking and loading spaces may be further varied. A variance, when granted, alters the zoning standards for a particular property in a way that is otherwise prohibited by the Zoning Resolution.

• **What are the Standards for Variances?**

No variance shall be granted that is greater than the minimum necessary to relieve an unnecessary hardship or practical difficulty. The requested variance must satisfy each of the following standards:

- a) The request is related to a unique physical condition of the subject property.
- b) The need for a variance is not self-created.
- c) Denial of the request would deny the property owner substantial rights.
- d) The alleged hardship or difficulty is not merely a request for special privilege.
- e) The request must be in harmony with the purposes of the Zoning Resolution.
- f) The variance would not result in a use or development on the subject property that:
 - 1. would be materially detrimental to the public welfare or materially injurious to the enjoyment, use, development value of property or improvements permitted in the vicinity;
 - 2. would materially impair an adequate supply of light due to adverse location of shadow to the properties and improvements in the vicinity;
 - 3. would substantially increase hazardous conditions in the public streets due to traffic or parking;
 - 4. would unduly increase the danger of flood or fire;
 - 5. would unduly tax public utilities and facilities in the area; or
 - 6. would endanger the public health or safety.
- g) Other specific factors as deemed necessary by the Board.

- **How do I apply for a Variance?**

A variance may be applied for only after a Zoning Plans Examiner has refused to issue a Zoning Certificate. The Plans Examiner, specifying the section(s) of the Zoning Resolution that are at issue, will issue a letter of refusal. Following the issuance of a refusal, the application for a variance shall be accompanied by site plans, structural details, and additional information as outlined in the attached checklist. The completed application packet and application fee shall be filed directly with the Board of Zoning Appeals. You may schedule an appointment with the Administrator of the Board if you have questions or wish to further discuss details of a case prior to submission. Requests for variance of a yard, bulk or parking standard must be clearly stated in the letter of application as submitted to the Board. If filing with the Board of Zoning Appeals for a conditional use, compatible non-conforming use, or some similar application request, your variance request will be combined with such other request and processed at the same public hearing.

- **Processing Procedures for a Variance:**

Minimum processing time for a Variance is typically 62 days.

- a) Within 5 days after filing a complete application, the BZA Administrator sets a public hearing for between 30 and 62 days from that date.
- b) The BZA Administrator sends notice of the public hearing at least 10 days prior to such hearing to the applicant, the Township, and to property owners within 200 feet of the subject property. A legal advertisement is published in a local county newspaper.
- c) **The Board of Zoning Appeals holds a Public Hearing** at their regularly scheduled meeting, usually the second Wednesday of each month at 1:00 p.m. Please refer to schedule for exact submission and hearing dates. The applicant or someone representing the applicant MUST be present at the public hearing.
- d) Following the closure of the public hearing, the BZA takes action within 30 days.
- e) If the application is approved:
 - 1) The BZA Administrator prepares a Resolution of Approval for the Chairman of the Board to sign officially authorizing the variance.
 - 2) A Zoning Plans Examiner issues a Zoning Certificate for the proposed use. Zoning Certificates for projects that also require a building permit are valid for a period no longer than six months unless a building permit has been issued or the BZA has granted an extension.
 - 3) Applicant applies to the Building Department for a Building Permit when required.
- f) When the development is complete a Final Zoning Inspection will be made and a Final Zoning Inspection Certificate will be issued.

Case No: _____

Filed: _____

**Hamilton County
Board of Zoning Appeals**
County Administration Building
138 E. Court Street, Room 801
Cincinnati, Ohio 45202
513-946-4550

Prepare a Letter referring to instructions in the "User's Guide" and including:

- a. The principal points set forth in this case shall be the same as those under which the administrative officer acted, whether the granting or refusal of a zoning certificate or any other decision based upon the regulation of the Zoning Resolution.
- b. A clear and accurate description of the construction use
- c. Specific reference to the Chapter and Section(s) of the Zoning Resolution which, it is claimed, authorize the determination sought

NAMES AND ADDRESSES

Applicant _____ Owner _____

Address _____ Address _____

Email Address _____ Email Address _____

The undersigned _____ hereby appeals under Chapter 21 & 22 and Section(s) _____ of the Zoning Resolution to permit the construction of a _____

_____ in accordance with the plats, plans and other data hereto attached and made a part of this case.

PROJECT IDENTIFICATION

ZONE DISTRICT	AUDITOR'S BOOK NO.	AUDITOR'S PAGE NO.	AUDITOR'S PARCEL NO.	LOT NO.

Project Location: _____

I hereby depose and say that all the above information and that statements contained in all of the exhibits transmitted herewith are true.

Applicant Signature

Sworn to and subscribed before me, this _____ day of _____

Notary Public

HAMILTON COUNTY BOARD OF ZONING APPEALS

APPLICATION NUMBER

Address of Subject Property _____ Township _____

	NAME	ADDRESS	CITY	STATE	ZIP CODE	PHONE NO.
OWNER						
CONTRACTOR						
PLANS BY						
APPLICANT						

TYPE OF IMPROVEMENT: (Describe briefly proposed work)

PROPERTY OWNERSHIP

- Private
- Public (Federal, State, Local)
- Corporate
- Other

BZA ACTION REQUESTED

- Appeal
- Variance
- Conditional Use
- Compatible Non Conforming Use
- Non Conforming Use
- Other

State in detail all existing and proposed uses of this building or premises:

Existing Use _____

Proposed Use _____

- Commercial
- Residential

Estimated cost of improvement for which this application is being made: \$ _____

The owner(s) of this building and undersigned, do hereby covenant and agree to comply with all of the laws of the State of Ohio and the Zoning Resolution of the County of Hamilton, pertaining to building and constructing the proposed building or structure or making the proposed change or alteration in accordance with the plans and specifications submitted herewith, and certify that the information and statements given on this application, drawings and specifications are to the best of their knowledge, true and correct.

Application By: _____ Address _____

DO NOT WRITE BELOW THIS LINE

Adopted: _____ Journalized: _____

BZA Filing Fee: _____ Cash _____ Check # _____

HAMILTON COUNTY BOARD OF ZONING APPEALS

County Administration Building
138 E. Court Street, Room 801
Cincinnati, Ohio 45202
513-946-4550

CHECKLIST FOR FILING A VARIANCE APPLICATION

Applications for a variance shall be **filed in person** with the Board of Zoning Appeals. A legal notice will be prepared by the Board of Zoning Appeals and placed in a newspaper of general circulation in the county at least 10 days prior to the public hearing. *The applicant will receive the bill for said legal notice.* The Board may also prepare for the applicant, if requested, a typewritten list of names and complete addresses of the property owners of all lots and lands located within 200 feet of the property requesting the appeal. Said list will be prepared from the County Auditor's current tax list. *The office of the Board will execute all forms, including individual and legal notices, necessary for the processing of an application.*

Hearings are held by the Board of Zoning Appeals in Room 805 of the County Administration Building, located at 138 East Court Street, Cincinnati, Ohio 45202

All complete applications shall include the following information. *Please submit this checklist with your application.*

1. THE LETTER - Please provide 1 copy

An explicit typewritten statement addressed to the Board of Zoning Appeals, setting forth the following:

- _____ The location and size of the property.
- _____ A clear and accurate description of the proposed construction or use of the property.
- _____ Specific sections of the zoning resolution in question, or from which the appellant is requesting a variance or relief.
- _____ State clearly any fact, hardship, or other pertinent information believed to support the variance sought or recommended.

2. THE SITE PLAN - Provide six (6) full size drawings + two (2) reduced drawings, 11" x 17" or smaller

The site plan shall be drawn to scale of not less than 1 inch equals 50' and shall contain the following information.

- _____ Surveyor's Seal (*Required for all new dwellings, residential additions or structures over 600 sq. ft. or less than 10' from a property line, and all commercial buildings.*)
- _____ Name of person(s) preparing the plan
- _____ Title, name of owner, & name of builder/contractor
- _____ North Arrow (North to top of plan)
- _____ Property lines, property dimensions, street name(s), site size
- _____ Existing and proposed buildings & other structures
- _____ Distance from structures to property lines

- _____ Paving, parking areas, driveways, walks, etc.
- _____ Parking space, aisle & drive dimensions, & parking analysis
- _____ Land use of parcels adjoining the proposed site
- _____ Streetscape & boundary buffer yards & interior landscape areas (when applicable)
- _____ Existing & proposed grades
- _____ Easements & purpose of easements

Note: Modification or changes to the plats and/or plans approved by the Board are subject to review by the Board and a new case may be required.

3. THE LANDSCAPE & LIGHTING PLAN

Provide six (6) full size drawings + two (2) reduced drawings, 11" x 17" or smaller

The landscape plan shall be drawn to scale of not less than 1 inch equals 50 feet. A landscape plan is not required for single family dwellings and similar uses not subject to buffering and landscape standards, but when required for other uses, the plan shall contain the following information.

- _____ Landscape Architects Seal or plants selected from Appendix A-2 – Recommended Plant List
- _____ Streetscape buffer yard width & location
- _____ Boundary buffer yard(s) width & location
- _____ Interior landscape areas size & location
- _____ Detailed schedule of planting materials including type, size, and location within each yard or area
- _____ Location and details (height, type, etc.) of any exterior light fixtures or poles
- _____ Indication (either photometric plan or similar lighting plan) that the light levels will be less than 0.5 footcandles at all property lines.

4. THE STRUCTURAL DRAWING – Provide six (6) sets of elevation drawings.

5. THE APPLICATION – Complete one (1) copy of the BZA application form.

6. THE FEE \$ _____ + Legal Advertisement

An application fee is required when the appeal is filed (all fees are nonrefundable and must be made payable to the Hamilton County Treasurer). Contact the Board of Zoning Appeals at 946-4550 for additional information.

Checklist Prepared by: Name _____
 Address _____
 Phone _____
 E-Mail _____
 Date _____

2013 BZA SCHEDULE OF FEES

CONDITIONAL USES

CONDITIONAL USES	FEE
Conditional Uses	\$707.00 plus \$146.00 per acre pertaining to the area of the conditional use.
MODIFICATIONS	
Modifications to approved Conditional Uses	\$569.00

VARIANCES AND APPEALS

VARIANCES	FEE
RESIDENTIAL	
Proposed improvements valued up to \$25,000	\$146.00
Proposed improvements valued over \$25,001	\$218.00
COMMERCIAL	
Proposed Improvements valued up to \$500,000	\$707.00
Proposed Improvements valued between \$500,001 and \$1,000,000	\$992.00
Proposed Improvements valued between \$1,000,001 and \$10,000,000	\$1,413.00
Proposed Improvements valued above \$10,000,000	\$2,823.00
ZONING CERTIFICATE	
Issuance of a Zoning Certificate	Fees are based on the Use type shown in Appendix 6- Zoning Certificates
PENALTIES	
The Board of Zoning Appeals may invoke a penalty fee of up to two times the application fee when a project is commenced prior to obtaining an approval.	
APPEALS	
Appeal to any order, decision, or determination made by an Administrative Official	\$431.00

NONCONFORMING USE AND COMPATIBLE NONCONFORMING USE APPLICATIONS

NONCONFORMITIES	FEE
Nonconforming Uses of Land and Structures	\$77.00
Noncomplying Structures	No Charge
Nonconforming Lots of Record	No Charge
COMPATIBLE NONCONFORMING USES	
Application for Compatible Nonconforming Uses	\$431.00

Make checks payable to the Hamilton County Treasurer. Fees do not include the cost of the legal advertisement. All processing fees are nonrefundable.

Legal Advertisement	\$60.00
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2013-14

Hamilton County Board of Zoning Appeals

Submission Deadlines and Meeting Dates

<u>Submission Date</u>	<u>Meeting Date</u> (2 nd Wednesday of each month)
December 11, 2012	January 9, 2013
January 8, 2013	February 13, 2013
February 12, 2013	March 13, 2013
March 12, 2013	April 10, 2013
April 9, 2013	May 8, 2013
May 7, 2013	June 12, 2013
June 11, 2013	July 10, 2013
July 9, 2013	August 14, 2013
August 13, 2013	September 11, 2013
September 10, 2013	October 9, 2013
October 8, 2013	November 13, 2013
November 12, 2013	December 11, 2013
December 10, 2013	January 8, 2014
January 7, 2014	February 12, 2014

Submission deadlines are subject to change depending upon meeting date schedule change. Underlined date notes change from standard schedule.

Rock Hill, South Carolina

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ZONING APPEALS APPLICATION

The Zoning Board of Appeals is authorized to hear the following appeals:

- Special Exception:** To review and decide applications for Special Exception Permits specifically authorized in the Zoning Code.
- Variance:** To review and decide applications for variance permits to allow certain deviations from the standards of the Zoning Code. *No variance shall be granted to allow a use of land, building, or structure which is otherwise prohibited in a zoning district.*
- Appeal for Review of Decisions and Interpretations of the Planning and Development Director:** To hear and review decisions of the Planning and Development Director when it is alleged that there is an error in any order, requirement, decision, or determination made by the administrative official in enforcing this ordinance.

Filing an Appeal: VERY IMPORTANT - PLEASE READ THE FOLLOWING PAGES CAREFULLY.

The following items must be submitted when filing an appeal with the Zoning Board of Appeals:

1. *Application.* All necessary forms are attached to these instructions. Please submit the following completed forms depending on the type of appeal:
 - a. Special Exception Forms 1 & 4
 - b. Variance Forms 1 & 3
 - c. Decision or Interpretation of Director Forms 1 & 2
2. *For Variance and Special Exception applications referring to a specific site:* A scaled drawing showing exact dimensions of the lot, location of all buildings with distance to property lines shown, driveways, parking, landscaping, or other information relative to your request no smaller than 11" x 17".
3. *Fee:* Effective August 1, 2002, the non-refundable application fee is as follows:
 - a. Residential \$100
 - b. Commercial \$300

Application Deadline: A complete application with all required materials must be submitted to the Zoning Administrator by the deadline in order to be scheduled on a public hearing agenda. Failure to complete application prior to the deadline date may result in the application not being placed on the next available agenda of the Zoning Board of Appeals. **Application deadlines are on the Friday 25 days prior to the public hearing (call the PAC for dates or check the website).** Public hearings are usually held on Tuesdays at 7:00 p.m., unless otherwise posted. Meetings are held in the Council Chambers at City Hall, 155 Johnston Street.

Criteria for Approval of Special Exceptions

Section 2-300(D)(4) Zoning Code: In order to approve a special exception, the Zoning Board of Appeals must determine that the following applicable standards are met. The Board may find that not all of these standards will be applicable in every case.

1. **Compiles with Use Specific Regulations.** The proposed special exception compiles with all standards in Section 4-300, *Use Specific Standards*.
2. **Compatibility.** The proposed special exception is appropriate for its location and compatible with the character of surrounding lands and the uses permitted in the zone district(s) of surrounding lands.
3. **Design Minimizes Adverse Impact.** The design of the proposed special exception minimizes adverse effects, including visual impacts of the proposed use on adjacent lands; furthermore, the proposed special exception avoids significant adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, and vibration, and does not create a nuisance.
4. **Design Minimizes Environmental Impact.** The proposed special exception minimizes environmental impacts and does not cause significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.

5. **Roads.** There is adequate road capacity available to serve the proposed special exception, and the proposed special exception use is designed to ensure safe ingress and egress onto the site and safe road conditions around the site.
6. **Not Injure Neighboring Land or Property Values.** The proposed special exception will not substantially and permanently injure the use neighboring land for those uses that are permitted in the zone district, or reduce property values.
7. **Site Plan.** A site plan has been prepared that demonstrates how the proposed special exception use complies with the other standards of this subsection.
8. **Complies with All Other Relevant Laws and Ordinances.** The proposed special exception use complies with all other relevant City laws and ordinances, state and federal laws, and regulations.

Please answer the questions in Forms 1 and 4 to address the above criteria.

Criteria for Granting of Variances

Section 2-300(E)(4) of the Zoning Code: The Zoning Board of Appeals may grant a variance in an individual case of unnecessary hardship by making and explaining in writing **ALL** the following findings:

1. **Extraordinary and Exceptional Conditions.** There are extraordinary and exceptional conditions pertaining to the particular piece of land.
2. **Unique Conditions.** These conditions do not generally apply to other property in the vicinity.
3. **Strict Application Deprives Use.** Because of the conditions, the application of this Ordinance to the land would effectively prohibit or unreasonably restrict the utilization of the land.
4. **Not Detrimental.** The authorization of the Variance Permit will not result in substantial detriment to adjacent land, or to the public good, and the character of the district will not be harmed by the granting of the variance.

It is the responsibility of the applicant to show that the above conditions exist. Please answer the questions in Forms 1 and 3 to address the above criteria.

Appeal for Review of Decisions and Interpretations of the Planning and Development Director

To hear and review decisions of the Planning and Development Director when it is alleged that there is an error in any order, requirement, decision, or determination made by the administrative official in enforcing this ordinance.

It is the responsibility of the applicant to show that the above conditions exist. Please answer the questions in Forms 1 and 2 to address the above criteria.

FORM 1 - Notice of Appeal: (All Applicants Must Complete)

This form must be completed on a hearing on appeal from a decision, interpretation, or action, of a zoning official; an application for a variance; or an application for special exception. Entries must be typewritten or printed legibly in dark ink. If the application is on behalf of the property owner(s), all owners must sign. If the applicant is not an owner, the owner(s) **must sign** the Designation of Agent.

The Applicant hereby appeals:

- from decision, interpretation, or action of the zoning official as stated on attached Form 2.
- for a variance as stated on attached Form 3.
- for a special exception as stated on attached Form 4.

Appeal Address: _____ Tax ID#: _____ Zone: _____
(Location of appeal site inside RH City Limits)

Applicant Name: _____

Address: _____

Phone: _____ Fax: _____ Email: _____

Property Owner (if not applicant): _____

Address: _____

Phone: _____ Fax: _____ Email: _____

Description of Appeal:

*Attach additional descriptions as needed. Note: An application for variance or special exception requires attachment of an **accurate, legible site plan** showing property dimensions and locations of all structures and improvements no smaller than 11" x 17".*

Designation of Agent (complete only if property owner is not applicant): I (we) hereby appoint the person named as Applicant as my (our) agent to represent me (us) in this application.

Signature of Owner(s) More names attached _____ Date

Certifications: I (we) certify that the information in the application and the attached Form(s) 2, 3, or 4 is correct. Further, I (we) have completely read this application and instructions and understand all it includes. We also attest that there are no recorded deed restrictions or restrictive covenants that apply to this property which are contrary to, conflict with, or prohibit the permitted activity being requested or appealed.

Signature of Applicant representing all owners _____ Date

OFFICE USE ONLY	
Date Received: _____	Complete: _____ If Not, Date Returned: _____
Date Advertised for Public Hearing: _____ (copy of ad in file)	
Date Property Posted: _____	
Date Written Notice Mailed: _____ (copy & distribution list filed)	
Date Staff Report Forwarded to ZBA: _____	
Final Decision Regarding Appeal: _____	
Zoning Permit Issued: _____	
Staff Signature: _____	Date: _____

FORM 3 - Variance Application: Please complete this page only if filing for a VARIANCE.

1. Applicant hereby appeals to the Zoning Board of Appeals for a variance from the strict application to the property described in the Notice of Appeal (Form 1) of the following provisions of the Zoning Ordinance:

2. Applicant requests a variance to allow use of the property in a manner shown on the attached site plan, described as follows:

3. The application of the ordinance will result in unnecessary hardship, and the standards for a variance set by Section 6-29-800 of the S.C. Code and Sec. 2-300 (E) (4) of the Zoning Code of the City of Rock Hill are met by the following facts.
 - a. There are extraordinary and exceptional conditions pertaining to the particular piece of land as follows:

 - b. These conditions do not generally apply to other property in the vicinity as shown by:

 - c. Because of these conditions, the application of the ordinance to the land would effectively prohibit or unreasonably restrict the utilization of the land as follows:

 - d. The authorization of the variance will not be of substantial detriment to the adjacent land, or to the public good, and the character of the district will not be harmed by the granting of the variance for the following reasons:

4. The following documents are submitted in support of this application (a site plan must be submitted):

5. List any other uses located on the property.

6. Total number of parking spaces on property (if applicable): _____

(Attach additional pages if necessary.)

Signature of Applicant(s)

Date

FORM 4 – Special Exception: Please complete this page only if filing for a SPECIAL EXCEPTION.

Applicant hereby appeals to the Zoning Board of Appeals for a special exception for use of the property described in the Notice of Appeal (Form 1) as provided in Section 4-300 of the Zoning Code (*Use Specific Standards*), and will comply with the applicable standards as follows:

1. The proposed special exception is appropriate for its location and compatible with surrounding land and uses as follows:

2. The proposed special exception will be designed/developed to minimize adverse impact on surrounding properties by:

3. What is the impact on environmental factors (*water, natural resources, wildlife habit, etc.*)?

4. What is the impact on roads, traffic and pedestrian safety?

5. What is the impact on neighboring land and property values?

6. Proposed special exception compiles with all other relevant City, State and Federal laws and regulations as follows:

7. The following documents are submitted in support of this application [*a site plan must be submitted*]:

8. List any other uses located on the property.

9. Total number of parking spaces on property (*if applicable*) _____

(Attach additional pages if necessary.)

Signature of Applicant(s)

Date

Springdale, Ohio

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CITY OF SPRINGDALE

BOARD OF ZONING APPEALS

CHAIRMAN'S STATEMENT

(STATEMENT CONCERNING THIS HEARING)

Ladies and Gentlemen, this is a Public Hearing, and all testimony given in cases pending before this Board is to be made a part of the public record. All testimony and discussion relative to said variance is recorded, and it is from this recording that our Minutes are taken.

Citizens testifying before this Board are directed to sign in on the clipboard in the rear of the room, take their place at the podium, state their names and addresses and the facts as they are pertinent to the subject before this Board.

As this is a Public Hearing, being sworn in prior to giving testimony is required by law.

At this time, please stand up, raise your right hand and repeat after me:

I (state your name)
Do solemnly swear
To tell the truth, the whole truth
And nothing but the truth,
So help me God.

Please be seated.

Be advised that anyone who was not standing and sworn in cannot testify unless they request the Chair to be sworn in as they come up to the podium.

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Planning Partnership

HAMILTON COUNTY
Regional Planning Commission