

**CLEARCREEK TOWNSHIP BOARD OF ZONING APPEALS
RULES AND REGULATIONS**

I. PREAMBLE

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

WHEREAS Chapter 21 of the Clearcreek Township, Warren County, Ohio Zoning Code (hereafter “Resolution”) provides for the establishment and powers of a Board of Zoning Appeals, and

WHEREAS the Clearcreek Township Board of Zoning Appeals (hereafter “Board”) wishes to establish certain rules and regulations to effectuate its purpose, provide consistency for its proceedings, and uniformity in its decisions,

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

II. ORGANIZATION AND OFFICERS

The Clearcreek Township Board of Zoning Appeals shall be comprised of five Full members, appointed for a five-year term, who shall be residents of Clearcreek Township, Warren County, Ohio.

To help assure the presence of a quorum at meetings of the Board, there shall be two Alternate members, appointed for a two-year term, who shall be residents of Clearcreek Township, Warren County, Ohio. Alternate members shall be required to attend all public meetings, and all public hearings of the Board.

The terms of the members shall be of such length and so arranged that the term of one full member and one alternate member will expire on the 30th of November of each year.

The Board shall organize annually at the first meeting held after the beginning of each calendar year for the purpose of electing officers. Officers shall serve a term of one year. There shall be a Chairperson and a Vice-Chairperson elected. The Board reserves the right to designate a Secretary.

With the advise and consent of the Board, subject to these Rules and Regulations, the Chairperson shall communicate with the Board of Trustees, Township administration staff, and other individuals regarding official business of the Board.

The Chairperson shall preside at all meetings and hearings of the Board. In the absence of the Chairperson, the Vice-Chairperson shall act as presiding officer.

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

Subject to these Rules and Regulations, the Chairperson shall decide all points of order and procedure, unless overruled by a majority of the Board in session at that time.

With the approval of the Board, the Chairperson shall have the authority to appoint any committees deemed necessary to further business of the Board.

Whenever possible, all members of the Board shall have the authority to make personal inspections when necessary for the proper consideration of cases.

The Chairperson presiding at the meeting or hearing shall sign the Minutes and other documents adopted, taken, or approved by the Board.

Full and Alternate members shall be reimbursed for attending meetings at a rate determined by the Clearcreek Township Board of Trustees.

Alternate members shall be subject to all of the conditions in Article VI Conduct Of Board Members.

When all five Full members of the Board are present:

- A. Alternate members shall be seated at a location separate from the regular members.
- B. Alternate members may ask questions and otherwise participate in discussions during any public hearing.
- C. Alternate members shall not participate in any deliberations or discussions of the Board during any public meeting.

A Full member of the Board shall be deemed to be absent when:

- A. A Full member has advised township staff of the member's absence prior to a scheduled meeting.
- B. A Full member is not present at the time of roll call.

When a Full member of the Board is absent, the chairperson shall designate an alternate to take the Full member's place. During the course of the calendar year, the chairperson shall attempt to give each Alternate member equal opportunity to serve when Full members are absent.

When a Full member of the Board is absent and an Alternate member has been designated to take that member's place:

- A. In the event a Full member enters a meeting after being declared absent and replaced by an Alternate member, the Full member shall assume the role of an Alternate member unless the Board is convened with fewer than five members.
- B. Alternate members shall continue in the place of an absent Full member to the conclusion of the issue before the Board, even if that issue is continued to a later date.

III. AVAILABILITY OF RULES AND REGULATIONS

A certified copy of these Rules and Regulations of the Board, in current form, shall be available in the office of the township administration as a public record. Additional copies shall be provided to members of the Board and made available to the public on request.

IV. STAFF ASSISTANCE

The Zoning Administrator (hereafter Administrator), or his authorized assistants, shall have the following duties and responsibilities relating to appeals, applications, and other Board business:

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

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

Any correspondence reasonably necessary and/or appropriate to carry out these functions shall be handled by the Administrator and copies of correspondence received and sent shall be provided to the Chairperson.

The Administrator shall take minutes at all Board meetings and provide a written summary to each member of the Board to be approved.

Thereafter, the Administrator shall prepare a Report to the Board for each appeal or application outlining the facts of the matter, a procedural history, and a detailed analysis of the reasons relating to the action or inaction taken by the staff. Unless specifically requested by the Board during a hearing, the Report shall not include an opinion or recommendation.

V. LEGAL COUNSEL

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

VI. CONDUCT OF BOARD MEMBERS

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

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

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

A member may disqualify him/herself from voting whenever any applicant, or his/her agent, has sought to influence the vote of the member on the appeal or application, other than in the public hearing.

Board members may seek information from other members or staff, prior to the public hearing, but no member shall discuss the case with any other parties prior to the public hearing, or express any bias, prejudice, or individual opinion of the case prior to its hearing and determination.

No Board member shall vote on any matter deciding an application or appeal unless s/he attends the public hearing(s) or reviews the official audio recording(s) of any such hearings, including any continuation of the hearing, or reviews the official audio recording(s) of such hearing(s) thereof; provided, however, that the applicant is advised and does not object to a Board member's voting on the matter by virtue of reviewing the official audio recording(s) of such hearing.

Full and Alternate Board members may participate in discussions or offer comments, clarifications, and/or modifications regarding draft minutes or draft decisions, regardless of the extent of their attendance or participation.

Full and Alternate Board members present at the meeting in question have the authorization to approve or modify minutes.

The approval of the minutes approves an associated decision. Changes or modification to the minutes shall be incorporated and reflected in an associated decision.

VII. MEETINGS OF THE BOARD

Meetings of the Board shall be held, as necessary, on the second Tuesday of each month, at the call of the Chairperson, and at such other times as the Board determines.

All meetings of the Board shall be open to the public.

The Secretary shall keep minutes of the proceedings showing the vote of each 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. Such minutes and records shall be signed by the Chairperson and immediately filed in the office of the Board of Trustees as a public record.

All meetings of the Board shall be audio recorded. Any party wishing to bring a stenographer to the hearing shall notify the Administrator in advance so that suitable arrangements may be made to accommodate the stenographer.

VIII. APPEALS TO THE BOARD

Appeals to the Board may be taken by any person aggrieved or by any resident of the Township affected by any decision of an administrative or zoning officer.

Every appeal shall be filed in writing by a person having legal and/or equitable interest in the property affected or by an attorney representing said person. An officer of a corporation may file an appeal on behalf of a corporation having legal and/or equitable interest in the property affected. However, a corporation must be represented by legal counsel at the public hearing. An attorney or a person having legal and/or equitable interest in the property affected must be present at the public hearing.

All applications and appeals shall be submitted on forms approved by the Board. No appeal shall be docketed and set for public hearing until all fees, required forms, and supporting documentation have been provided.

Such appeal shall be taken within twenty days after the decision by filing, with the officer from whom the appeal is taken, a notice of appeal specifying the grounds.

No appeal shall be entertained where an appeal has been previously determined involving the same premises and zoning issue, except where new plans or facts and circumstances are presented showing changed conditions which, in the opinion of the Board, warrant the filing of such appeal.

The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

IX. SCHEDULING OF HEARINGS AND MEETINGS

The Board shall fix a reasonable time for the public hearing of an appeal, give at least ten (10) 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 as selected by the Board in the county at least ten (10) days before the date of such hearing.

Any meeting of the Board may be recessed or adjourned from day to day, or to the day of any previously announced meeting, and any such recess or adjournment to a time and place certain shall not require additional public notice. Those members of the Board who attend a first hearing date shall have priority in attending and participating in a recessed or adjourned meeting.

If it is apparent that no business is scheduled before the Board or that a quorum will not be available, any meeting may be canceled by the Chairperson upon reasonable notice.

Three members of the Board shall constitute a quorum.

X. AGENDA

The order of business for each meeting of the Board shall be as follows:

- a. Call to order and roll call
- b. Approval of the minutes of the previous meeting
- c. Testimony oath and sequence of events
- d. Continued hearings, which shall be heard in the order in which they were filed, with consideration and determination
- e. New hearings, which shall be heard in the order in which they were filed, with consideration and determination
- f. Order of business for the public hearing
 1. Close public meeting
 2. Open public hearing
 3. Ask members of the BZA: if s/he has visited site or is familiar with site?
 4. Ask staff: did applicant submit a complete application?
 5. Applicant's presentation
 6. Staff's presentation
 7. Proponents' statements
 8. Opponents' statements
 9. Applicant's rebuttal
 10. Close public hearing
 11. Reopen public meeting
 12. BZA discussion based on the standards for application
 13. Motion based on the standards for application
 14. Ask for staff to call roll for the vote

15. **If approved:** This is an oral approval of your application. A written notification will be sent to you by certified mail, after the minutes of this meeting have been approved at our next scheduled meeting. You may proceed with the permit process and at your own risk initiate construction while waiting for the written approval.

16. **If denied:** This is an oral denial of your application. A written notification will be sent to you by certified mail, after the minutes of this meeting have been approved at our next scheduled meeting. From that filing date, you have 30 days to appeal this decision to the warren county common pleas court.

- g. Old business
- h. New business
- i. Adjournment

XI. PRESENTATION OF CASES

All individuals appearing before the Board shall sign a sheet with their name and address.

No person shall address the Board until recognized by the Chairperson. Each side shall proceed without interruption by the other. There shall be no questioning or argument between individuals in the audience. The length of presentation and number of witnesses may be limited by the Board in its discretion.

The Chairperson shall rule on all questions relating to the admissibility of evidence, but may be overruled by a majority of the Board members present. The Board shall not be bound by strict rules of evidence, but may exclude irrelevant, immaterial, incompetent, or repetitious testimony or evidence.

XII. FINDINGS AND DECISIONS

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

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

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

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

If at least three members of the Board concur upon the pending motion in deciding a case, then said motion shall have been passed. If less than three members of the Board concur upon the pending motion in deciding a case, then said motion shall have failed. A vote of abstention shall not be counted as a concurring vote. A tie vote shall result in a failure of the motion.

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

XIII. TIME LIMITATIONS

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

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

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

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

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

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

XIV. REQUESTS TO WITHDRAW OR AMEND APPEAL OR APPLICATION

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

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

XV. DEFERRALS AND CONTINUANCES

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

XVI. AMENDMENTS TO RULES AND REGULATIONS

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

Upon approval by the Board of an amendment to these Rules and Regulations, it shall be forwarded by the Chair to the Clearcreek Township Board of Trustees for consideration in compliance with section 21.02(b)(3) of the zoning resolution. The Administrator will forward the amendment to the Law Director for review and recommendation. After the document has been reviewed it will be returned to the Administrator. The trustees will consider the Board's approved proposed amendment as well as the Law Director's recommendation(s) at their next scheduled meeting for formal incorporation. The Resolution of the Trustees will be forwarded back to the Board. At its next meeting, the Board must approve the Resolution of the Trustees by a majority vote to validate the amendment.