



Zoning Boards of Appeals

Membership

Five (5) members – legal residents of the township who are appointed by the township trustees

Trustees may appoint two (2) alternates to attend when a regular member is unavailable.

Enabling legislation

- ❖ Organize and adopt rules in accordance with the zoning resolution.
- ❖ Meetings at the call of the chairperson, and at such other times as the board determines.
- ❖ 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 public meetings
- ❖ Keep minutes of proceedings showing the vote of each regular or alternate member upon each question, or, if absent or failing to vote, indicating such fact
- ❖ Keep records of 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

Rules/Bylaws

Specify certain responsibilities, such as defining officers and their duties, quorum rules, meeting procedures, conflict of interest procedures, and other aspects of the BZA's operation.

When is something considered "filed" with the BZA?

Principal functions

Quasi-judicial body – duties imposed by statute.

- ❖ Hear and decide appeals
- ❖ Authorize variances (upon appeal)
- ❖ Issue conditional use permits
- ❖ Revoke authorized variance or conditional zoning certificate granted for the extraction of minerals.

Ethical considerations and conflicts of interest

- ❖ Personal interests
- ❖ Family and business associates
- ❖ Use authority or influence to secure thing of value if the thing of value has a substantial and improper influence
- ❖ Solicit or accept anything of value if the thing of value has a substantial and improper influence
- ❖ Individual meetings with applicants or opponents
- ❖ Prohibited:
 - ❖ Interest in township contract ORC §511.13
 - ❖ Unlawful interest in public contract ORC §2921.42

Principal functions

Broad powers are granted to a zoning board of appeals to provide for flexibility in the implementation of regulatory measures so that the measures do not operate in an arbitrary, unreasonable, or confiscatory manner, or in any manner that would be unconstitutional.

Am. Jur. 2d, Zoning and Planning § 722

Principal functions

The township board of zoning appeals does NOT make zoning regulations or zoning districts; that is the function of the township zoning commission.

Principal functions

...[T]he 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.

Ohio Revised Code §519.14

Hearing prep/Site visits

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.

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Hearing prep/Site visits

Do not go onto the site unless

- ❖ the property owner has granted specific written permission; OR
- ❖ 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.

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Hearings

- ❖ Less formal than court proceeding.
- ❖ Authority to subpoena.
- ❖ Testimony under oath.
- ❖ Free to accept or reject witness testimony (state why).
- ❖ May hear from experts and non-experts.
- ❖ Remember a corporation must be represented.
- ❖ Roll call vote.
- ❖ Still has duty to make essential findings of fact sufficient to support conclusions.
- ❖ Reviewed on appeal for reasonableness.

Hearings

RULES for speakers

- ❖ Direct comments to the chair.
- ❖ Limit speaking time.
- ❖ Request a spokesperson for the audience.
- ❖ Limit repetition.
- ❖ After public hearing is closed...no more comments from the audience.

Hearings

RULES for BZA

- ❖ No private conferences prior.
- ❖ Make all comments aloud for the record (no side conversations).
- ❖ Not all questions have answers.
- ❖ If necessary, take a recess.
- ❖ Take your time making a decision.

Hearings

Essential elements of a fair hearing:

- ❖ The party whose rights are being determined must be given the opportunity to offer evidence, cross-examine adverse witnesses, inspect documents, and offer evidence in explanation and rebuttal.
- ❖ Absent stipulations or waiver, the board may not base the findings as to existence or nonexistence of crucial facts on unsworn statements.
- ❖ Crucial findings of fact which are unsupported by competent, material, and substantial evidence in view of the entire record as submitted cannot stand.
- ❖ Ohio Revised Code 2506.03

Hearings

Appellant can testify, present witness testimony or other evidence, and ask questions of the zoning inspector or other officials.

Zoning inspector presents own case.

Counsel is not necessary...but must be allowed if requested.

Hearings

Legal representation –

Prosecutor's office represents the zoning inspector.

Same attorney cannot advise the BZA regarding the case (can provide procedural information that is not case specific prior to hearing).

Hearings

Public comment should be restricted or prohibited as it not probative evidence.

"[T]he bulk of these [members of the public] are merely offering their subjective and speculative comments and unsubstantiated opinions. Such testimony cannot rise to the crest of the reliable, probative, and substantial evidence..."

"The fact that adjudicatory hearings are to be open to the public does not result in their transformation into legislative public hearings with the corresponding right to receive input of public comment at that time."

Adelman Real Estate Co. v. Gabanic, 109 Ohio App. 3d 689, 694.

Hearings

Meeting minutes or verbatim transcript?

Stenographer fees

Ohio Revised Code 2506.03

Hearings

Hearing for additional evidence where 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 .

Meeting minutes

- ❖ What was discussed?
- ❖ Who spoke and what did they say? (name and address)
- ❖ What action did the Board take? Motion to vote, vote, and any conditions attached to approvals.
- ❖ Why was this action taken? Detailed findings.
- ❖ Approval or adoption required to be official.

Making decisions

Rules of thumb in making interpretations:

- ❖ Base map interpretation on the zoning ordinance itself and on any relevant historical information.
- ❖ 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.
- ❖ Give weight to reasonable practical interpretations by administrative officials if applied consistently over a long period of time.
- ❖ 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.
- ❖ 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.

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Making decisions

Deliberations do not have to be public pursuant to Sunshine Law.

HOWEVER

Consider the completeness of the record upon appeal.

Findings of fact

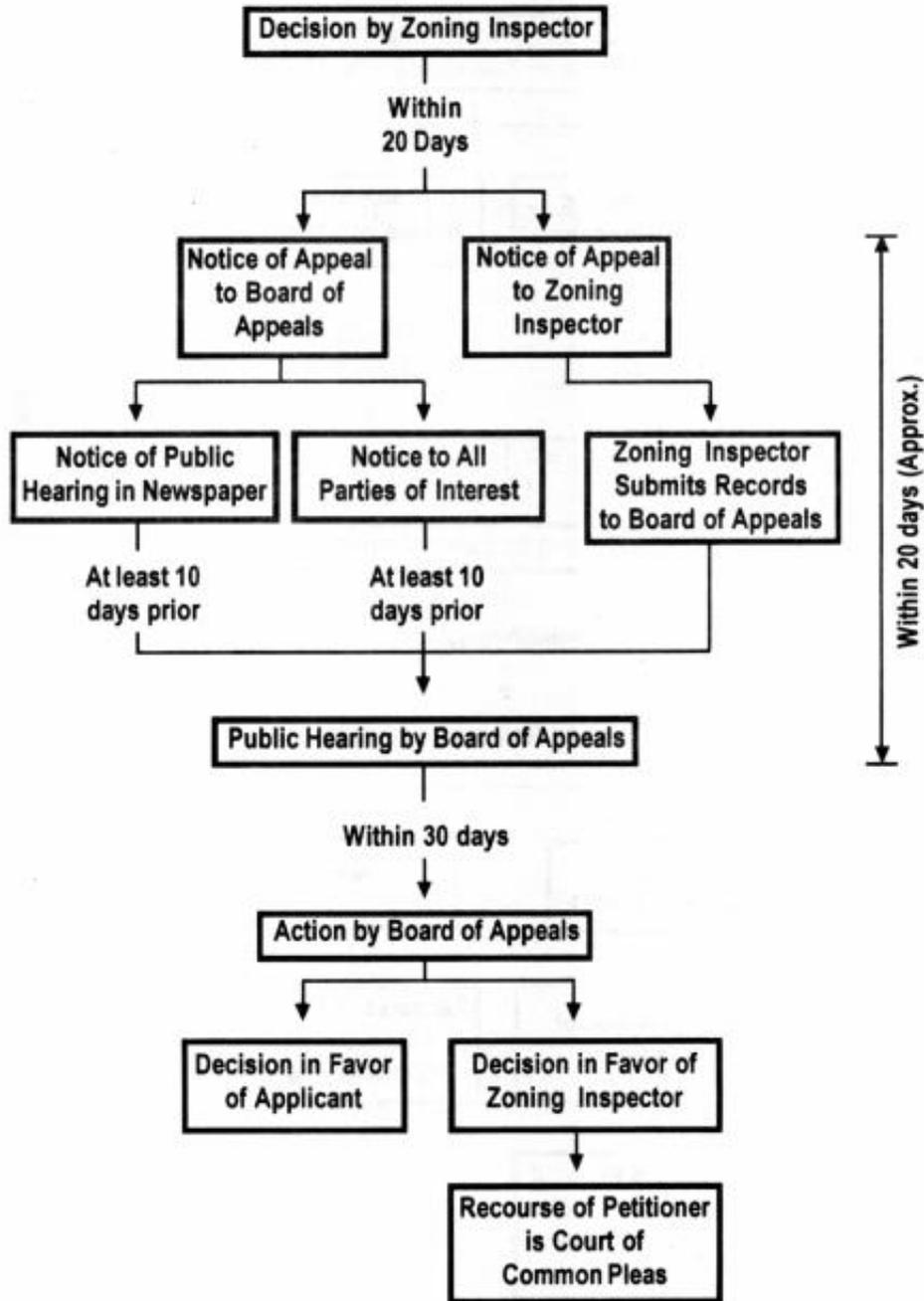
- ❖ Concise statement of action
- ❖ **REASONS FOR THE DECISION**
- ❖ Weight of specific facts and evidence
- ❖ How applicant did/not meet their burden.
- ❖ Specific reference to the zoning code.
- ❖ Approval or adoption required to be official

Appeals

Zoning Inspector should provide information to residents how to appeal if they are not satisfied with decision of zoning inspector.

Appeal hearings/notice

- ❖ Notice of appeal must be filed within 20 days – with the officer from whom the appeal is taken AND the BZA – specifying grounds of the appeal.
- ❖ Officer to transmit (to BZA) all papers constituting the record.



Variance hearings

- ❖ Open meetings
- ❖ Any interested party
- ❖ Obtain relief from having to strictly comply with terms, conditions, or requirements
- ❖ Hardship
- ❖ Permanent approved deviation (runs with the land)
- ❖ Use or area

Use variance hearings

- ❖ The property could not be used (be put to a reasonable use) for the purposes permitted in that zone district.
- ❖ The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.
- ❖ 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.
- ❖ The problem is not self-created.
- ❖ The variance would not adversely affect the delivery of governmental services, for example water, sewer, garbage.
- ❖ The applicant purchased the property without knowledge of the zoning restriction.
- ❖ The applicant's predicament feasibly cannot be resolved through some method other than a variance.
- ❖ The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Area variance hearings

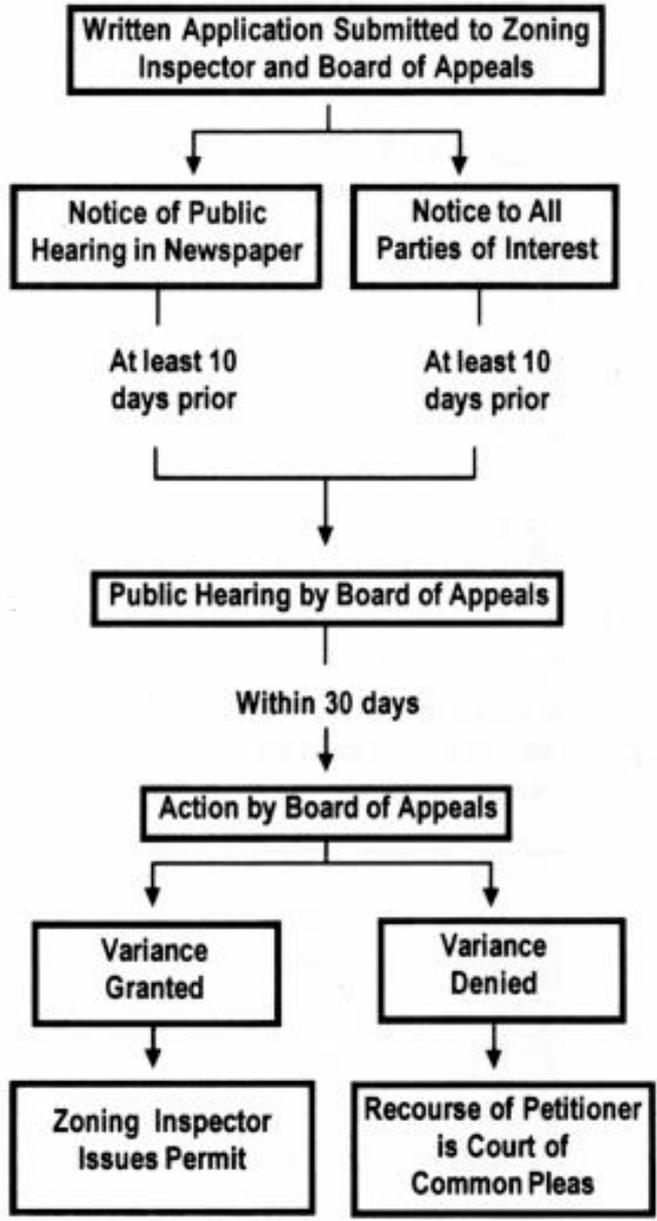
❖ Practical difficulty - Duncan factors

1. whether the property in question will yield a reasonable return or whether there can be any 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 substantial detriment as a result of the variance;
4. whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
5. whether the property owner purchased the property with knowledge of the zoning restrictions;
6. whether the property owner's predicament feasibly can be obviated through some method other than a variance;
7. 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.

Variance hearings

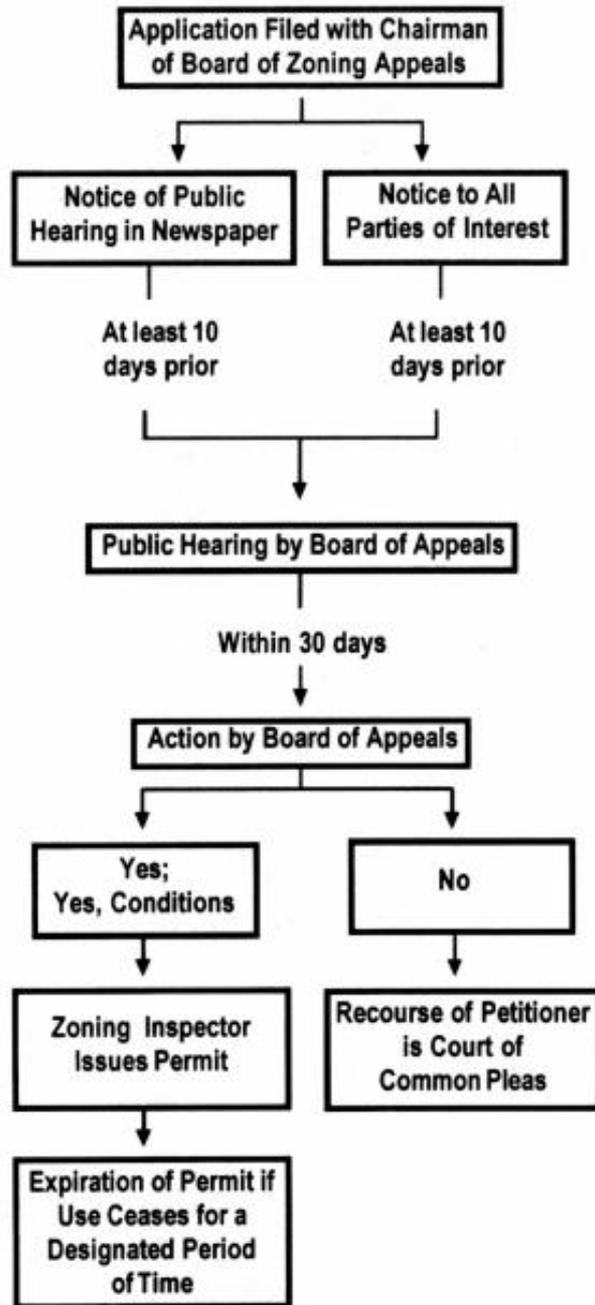
- ❖ Burden of proof on applicant
- ❖ Economic impact alone not enough
- ❖ Precedent – uniqueness
- ❖ Avoiding re-zoning or recently denied zoning change?
- ❖ Watch for emotional appeals
- ❖ Minimum variance necessary
- ❖ Evidence presented AT THE HEARING



Within 20 days (Approx.)

Conditional use hearings

- ❖ Only when specifically provided in Zoning Resolution
- ❖ Normally infrequent, unusual, and temporary use of marginal land



Within 20 days (Approx.)

Zoning Boards of Appeals

“A Board of Zoning Appeals has the inherent authority to reconsider its own decision. *State, ex rel. Borsuk v. Cleveland* (1972), 28 Ohio St.2d 224. However, the ability to reconsider a decision only exists until the actual institution of a court appeal or until expiration of the time for appeal. *Holmes, Inc. v. Board of Zoning Appeals* (1987), 35 Ohio. App.3d 161. Moreover, as long as a board grants the request to reconsider a decision within the statutory time period for appeals, “. . . it cannot reasonably be expected to always issue a hurried merit ruling before the end of the appeal period.” *Hal Artz Lincoln-Mercury v. Ford Motor Co.* (1986), 28 Ohio St.3d 20. A decision, however, should be made within a reasonable period of time.”

Role of Township Zoning Bodies, Donald F. Brosius, Brosius, Johnson & Griggs, LLC

Zoning Boards of Appeals

The doctrine of res judicata applies to decisions of a township board of zoning appeals.

- ❖ Denied once
- ❖ Failure to appeal

Set Products, Inc. v. Bainbridge Township Board of Zoning Appeals (1987), 31 Ohio St.3d 260.

***changed circumstances of a material and relevant nature

Zoning Boards of Appeals

The township board of zoning appeals is the judge, not a party, and CANNOT appeal to the Court of Common Pleas.

Kasper v. Coury, 51 Ohio St. 3d 185 (1990).

Zoning Boards of Appeals

<http://www.hamiltoncountyohio.gov/pd/planning/partner/pdf/resources/Handbook.pdf>

<http://www.slideshare.net/TrinaDevanney/administrative-appeals>

[http://www.ohiotownships.org/sites/default/files/How%20to%20Establish%20a%20Great%20\(and%20legal!\)%20Fee%20Schedule.pdf](http://www.ohiotownships.org/sites/default/files/How%20to%20Establish%20a%20Great%20(and%20legal!)%20Fee%20Schedule.pdf)

Sample findings of fact:

<http://www.richfieldvillageohio.org/Portals/0/Mindi/2015%20Zoning/Findings%20of%20Fact%20Case%203-2015.pdf>

Sample by-laws:

<http://www.brunswickhillstwp.org/wp-content/uploads/2015/08/BZA-Information.doc>

And

<http://zoning.hamilton-township.org/wp-content/uploads/BZA-Guidelines.pdf>

Flowcharts provided by:

<http://www.starkcountyohio.gov/uploads/cf/a2/cfa2ac5e5bad7694d3f643d7de3e347f/Understanding-The-Powers-and-Duties.pdf>

Meetings

- o Meetings shall be held at the call of the chairperson and at such other times determined by the board. O.R.C. 519.15
- o **All meetings shall be open to the public.**
O.R.C. 519.15
- o The Board shall keep minutes of all of its proceedings which shall be filed with the Trustees and is a public record. O.R.C. 519.15

Hearings/Notice

When an appeal is filed, the board shall fix a reasonable time for the public hearing of the appeal.

The Board must give at least ten days' notice in writing to the parties in interest

It must give notice of the public hearing by one publication in one or more newspapers of general circulation in the county at least ten days before the date of the hearing. O.R.C. 519.15

Conducting a Proper Meeting

- o A meeting should be conducted according to an agenda which is published in the notice.
- o The Chairman call the meeting to order.
- o A roll call attendance is taken to determine whether there is a quorum of the Board present.
- o The Notice of Appeal or application for conditional zoning certificate is read into the record

Conducting a Proper Meeting

- o Verification should be made on the record of the publication of notice of the meetings in the newspaper(s) and written notices to the parties of interest.
- o The Chairman takes testimony of interested parties wishing to testify.
- o The Chairman should entertain questions or discussion from other Board members.

Conducting a Proper Meeting

- o Upon completion of testimony the Board should adjourn into executive session to discuss and deliberate to arrive at a decision.
- o Upon completion of deliberations the Board must go back into open session and by resolution adopted by a majority vote, grant or deny the appeal.
- o There should then be a Motion to adjourn.

Record of Meeting

- o The Board must make a sufficient record of the meeting to be reviewed by a trial court upon appeal by an aggrieved party.
- o A court reporter should record the meeting to make a proper record.
- o If no court reporter, the meetings should be recorded capable of written transcription.

Record of Meeting

- o If an accurate record cannot be provided to the trial court, the party appealing the Board's decision is entitled to a new hearing before the trial court and the court will decide on the evidence presented at the new hearing.

Record of the Meeting

- o All decisions of the Board must be made in writing, adopted by resolution of the Board and recorded in the official minutes of the hearing.
- o The written decision of the Board should include a statement of the appeal or variance requested.
- o The written decision must also include a findings of fact made by the board upon the evidence presented at the hearing.

Record of the Meeting

- o The written decision of the Board must also contain the conclusion of the Board with its reasoning supporting its decision, and a statement granting or denying the appeal or variance.
- o This written decision must be signed by the affirmative voting members of the Board and mailed to the appellant using certified mail with return receipt requested.