

# VILLAGE OF BOSTON HEIGHTS

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## Board of Zoning Appeals

### RULES OF PROCEDURE

#### ARTICLE I ORGANIZATION

1. Under the provisions of Chapter 1145 of the Codified Ordinances of the Village of Boston Heights, County of Summit, Ohio, the following rules and regulations are prescribed. These rules and regulations are supplementary to the provisions of the Codified Ordinances (CO) as they relate to the Board of Zoning Appeals (BZA, or Board), and specifically to Part 11 *Planning and Zoning Code*.
2. Officers and Staff.  
The sole officer of the BZA shall be the chairman, who shall be elected for a one year term at the first meeting of the BZA in each calendar year. The BZA shall accept as Clerk that person so appointed by the Mayor.
3. Chairman.  
The Chairman shall be a regular voting member of the BZA and shall:
  - Call meetings of the BZA;
  - Preside at meetings and hearings and swear in witnesses;
  - Act as spokesperson for the BZA;
  - Sign documents for the BZA; and
  - Perform other duties approved by the BZA.
4. Acting Chairman.  
In the event of the absence, disability or disqualification of the Chairman, an Acting Chairman shall be elected by the members present. The Acting Chairman shall exercise the duties of the Chairman for that meeting, or if necessary until the next meeting of the BZA.
5. Clerk  
The Clerk shall, at the discretion and direction of the Mayor:
  - Provide and publish notices of appeals and meetings;
  - Assist the Chairman in preparation of the agenda;
  - Distribute BZA application forms and publications to the public;
  - Keep minutes of meetings and hearings;
  - Maintain BZA records as public records;
  - Attend to BZA correspondence; and
  - Perform other duties normally carried out by a Clerk or Secretary.

In the event of the absence of the Clerk, or any replacement designated by the Mayor, an Acting Secretary shall be elected by the members present. The Acting Secretary shall

exercise the duties of the Clerk for that meeting, and promptly transmit all records of that meeting to the Clerk at the earliest opportunity.

6. Legal Advisor.

The Village Solicitor, or his deputy, shall serve as the legal advisor and assist in the preparation of decisions for the BZA, insofar as permitted by the Codified Ordinances.

## **ARTICLE II MEETINGS**

1. Time and Place.

An annual tentative schedule of meetings shall be adopted and maintained by the BZA in December of each year. The BZA shall endeavor to meet at least once each month at a regularly scheduled time, when there is business on its agenda. Meetings will be held at the Boston Heights Village Hall, unless otherwise agreed and published. Meetings shall be held after required legal notices are posted and published, and shall be open to the public.

2. Notifications.

Pursuant to Ohio Revised Code 121.22, the BZA will establish by rule a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings, and the time, place and purpose of all special meetings, in accordance with the requirements of that code.

3. Members and Quorum.

Members and quorum shall be as defined by Chapter 1145 of the Codified Ordinances of the Village of Boston Heights with four members appointed by the Mayor with consent of Council, and one member appointed by Council as its representative. Where a member is unable to serve on the Board, a substitute member may be appointed by the Mayor or Council in accordance with that Chapter until the regular member can resume service.

*[revised 10/02/2013 to conform with C.O. Chapter 1145 (revised 2012)]*

No action shall be binding unless approved by the majority of the BZA present and voting at a meeting. A recusal of a member constitutes an act not to participate on a case, thereby reducing the number of members present. An abstention by a member shall not reduce the number of members present but shall not be considered a vote and shall not be counted toward the majority.

4. Order of Business

- Roll call and declaration of Quorum
- Approval of Minutes
- Call of agenda cases (hearings)
- Old Business
- New Business
- Adjourn

5. Village Officers

The BZA shall request the presence of the Zoning Inspector, Building Inspector, Village Engineer, or any other Village officer, at any meeting where any matter may require their statement or testimony.

### **ARTICLE III CONDUCT OF HEARING**

1. **Appearances.**

Any appellant or applicant shall appear before the BZA in person or be represented by an attorney at the hearing. The BZA may, at its discretion and with proper documentation, accept instead the appearance of a proxy or representative. The Board may postpone or proceed to dispose of a matter on the agenda before it in the absence of an appearance on behalf of an applicant.

2. **Testimony.**

Any witness whose testimony may be desired at any hearing before the BZA shall testify orally, under oath, unless the BZA, for good cause shown, deems it proper in special cases that written evidence, under affidavit or otherwise, be submitted. Pursuant to Ohio Revised Code 1.59(B): "oath" includes affirmation and "swear" includes affirm.

3. **Order of Hearing.**

Participants in a hearing shall appear in the following order:

- Introduction of the case by the Chairman.
- Statements by Zoning & Building Inspectors, and Village Engineer.
- Appellant's or applicant's presentation.
- Supporters' and protestants' presentation(s).
- Appellant's or applicant's rebuttal.

Every person before the rostrum shall identify his/her name, address and interest in the matter at hand, and shall abide by the order and direction of the Chairman, who may impose reasonably equitable time limitations on presentations. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the BZA and shall be dealt with as the Chairman deems proper.

4. **Adjudicatory Hearing.**

In the case of an appeal, request for variance, or request for conditional use certificate, the appellant or applicant, or any protestant of interest in the matter at hand, or an officer of the Village, may explicitly request the form of an adjudicatory hearing, in which case the Chairman will rely on the Legal Advisor to assist the Board in observing the required legal procedures, including objection to or cross-examination of witnesses by parties of interest, inclusion only of sworn testimony, and maintenance of a transcript in accordance with the requirements of the Ohio Revised Code, particularly Chapter 2506 *Appeals from Orders of Administrative Officers and Agencies*.

In the event that an explicit request for adjudicatory hearing is not made, cross-examination will not be permitted, and all speakers shall address the Board. Questions will be properly directed by the Chairman. In addition, the Chairman may then at his discretion permit unsworn public comment following the order of hearing, to the end of discerning matters of public interest.

5. **Voting.**

Upon the termination of the hearing or within a reasonable time thereafter, a discussion among the members shall be convoked and a voice vote on the appeal or application shall

occur. The Clerk shall conduct a voice vote by roll call of the members of the BZA. Each member will vote on each motion, application or appeal, unless the member abstains or recuses, but no member shall vote on a matter that he/she has not heard.

A member must recuse himself/herself when he/she becomes aware of a financial conflict of interest. The member should inform the Chairman and shall not participate in any further discussion as a member of the Board, but may retire to the audience and participate in the hearing as an member of public, or person of interest, during the case at hand.

An affirmative vote of a majority of the members voting is required to approve an application, appeal or motion. A tie vote or a negative vote of a majority defeats the application, appeal or motion.

6. Determinations.

a. Form of decision.

Final decisions of the BZA on an appeal, request for a variance, or any administrative review shall be made by a written order in the form of a decision duly entered and signed by the Chairman, or in his absence, the Acting Chairman. Such order shall set forth the reason or reasons for the Board's determination. It may grant the application, or may affirm, reverse or modify the order, requirement, decision or determination.

b. Notice of decision.

The Clerk shall notify all parties of interest, including the Zoning Inspector, of such decision and shall transmit to the appellant or applicant a true and exact copy of the written order of the BZA denying or granting the appeal or application.

c. Conditions imposed by BZA determination.

Whenever the BZA imposes any condition with respect to granting a variance, or any administrative review, such condition must be stated in the Board's order and in the certificate issued pursuant thereto by the Zoning Inspector. Such certificate shall remain valid only as long as the condition or conditions upon which it was granted or the conditions imposed by the Zoning Code are effective.

d. Time limit on obtaining certificate.

Any approved use, whether by variance, conditional use certificate, or other administrative review, shall be governed by the time limits imposed by Section 1151.04(b) of the Codified Ordinances.

7. Records of Hearings.

a. Required records.

The BZA shall keep minutes of its proceedings in accordance with CO 1145.02, 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 or other official actions.

b. Maintenance of records.

The BZA shall request the Mayor to direct that its records to be maintained by the Clerk and office staff of the Village of Boston Heights in accordance with the applicable ordinances and regulations. All minutes of meetings and records of or examinations and other official

actions shall be a public record. All requests for records shall be governed by the applicable ordinances and regulations of the Village of Boston Heights.

c. Maintenance of docket.

The Clerk shall maintain a docket, shall note each appeal or application under an appropriate caption, and shall record thereafter, by suitable and appropriate entries, the course of said appeal or application.

8. Rehearings.

No request to grant a rehearing will be entertained unless new evidence is submitted, which could not reasonably be presented at the previous hearing, or upon sufficient evidence of a bona fide clerical error on the part of the BZA or the Village. If the request for a rehearing is granted, the case shall be put on the docket for a rehearing after posting and advertising requirements have been met at requester's expense. In all cases, the request for a rehearing shall be in writing reciting the reasons for the request, and shall be duly verified and accompanied by the necessary data and exhibits. The person requesting the hearing shall be notified to appear before the BZA on a date to be set by the BZA.

## **ARTICLE IV ADMINISTRATION**

1. Adoption.

These rules were adopted by vote of a majority of the members of the Board of Zoning Appeals at a regular public meeting on October 2, 2013, in revision of the original rules adopted July 7, 2004, in order to explicate and enlarge on the historical rules and regulations of the Board.

2. Amendments.

The Board of Zoning Appeals may from time to time amend any part or parts of these Rules and Regulations by vote of the Board as provided in these Rules and Regulations, but such vote shall not occur before at least seven (7) days after the written amendment is delivered to all members of the Board.

3. Form of Application.

The BZA shall establish by rule such forms and requirements for application as it finds necessary to expedite the business of the Board and ensure that all necessary information is brought before the Board in a timely and organized manner. Such forms and requirements may be designed in consultation with the Clerk and Village officers.

4. Form of Oath or Affirmation.

The Chairman, with the advice of the Legal Advisor, shall establish the form of oath to be administered for testimony before the Board. In the absence of another form, this oath may be used:

*Chairman:* "Do you swear [or affirm] that the testimony that you are about to give this evening is the truth, the whole truth, and nothing but the truth [, so help you God] ?"

*Witness:* "I do".

The Chairman may administer the oath en masse to all desiring to testify before the Board at a given meeting, but must then inquire of each witness as to whether he/she has been sworn.

5. Parliamentary Procedure.  
Robert's Rules of Order, Revised shall serve as a guide for the BZA where these Rules are silent.

Adopted by the Board of Zoning Appeals of  
the Village of Boston Heights, Ohio  
on October 2, 2013 in revision of the original rules adopted July 7 , 2004.

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William J. Hinkle, Chairman