

CITY OF UPPER ARLINGTON, OHIO

BOARD OF ZONING AND PLANNING Rules and Regulations

City Charter Section XV – “The Council may establish a Board of Zoning and Planning and may fix the number, qualifications, and terms of the members thereof. The duties, powers, limitations and procedures of such Board of Zoning and Planning may be prescribed by ordinance. In the absence of such ordinance it shall perform the duties and exercise the powers conferred upon the City Zoning and Planning commissions by general laws of the state not in conflict with this Charter. The Council may exercise all powers relative to zoning and planning in the City and surrounding area vested by law in municipalities.”

The Board of Zoning and Planning shall be comprised of seven (7) citizens of this City, who shall be appointed by the Mayor subject to the approval of Council. Terms of office shall be for three (3) years and shall expire on the last day of February. Appointments shall commence on the date the appointment is approved by Council or such other date is provided by Council. Any member appointed to fill a vacancy occurring prior to the expiration of the term shall be appointed for the unexpired portion of said term.

SECTION 1. **Regular Meetings**

The regular meeting of the Upper Arlington Board of Zoning and Planning, hereafter referred to as the "Board", shall be held on the third ~~Monday~~ Wednesday of each month. In those instances, where the third ~~Monday~~ Wednesday of a month is a holiday, the regular meeting shall be scheduled as deemed appropriate by the Board. The hour and place of the meeting shall be 6:30 p.m. in the Council Chamber or the Lower Level Meeting Room of the Municipal Services Center, 3600 Tremont Road. As deemed necessary, the Board may meet virtually in accordance with state law and open meetings requirements. All meetings shall be open to the public.

SECTION 2. **Organization**

- a. The Secretary shall certify the membership of the Board each year at the time the Board organizes.
- b. The Board shall elect one of its members Chair for a term of two years ending on the day after the last meeting in March.
- c. The Board shall also elect one of its members Vice Chair who shall perform the duties of the Chair in the event the Chair is unable, for any cause, to perform his or her duties. The term of office of the Vice Chair shall be for two years ending on the day of

the meeting in March.

- d. In the absence of the Chair and Vice Chair, the Secretary shall call the Board to order and call the roll. If a quorum (4 members) shall be present, the Board shall appoint one of its members to perform the duties of the Chair for that meeting, or until the appearance of the Chair and Vice Chair.
- e. Pursuant to C.O. 157.03, the Senior Planning Officer, his or her designee or such other person as may be directed by the Council shall be the Secretary of the Board of Zoning and Planning. The Board shall have such assistance and such other employees as the Council may from time to time authorize. The Secretary, or an appropriate designee, shall be present at all meetings of the Board and shall record the proceedings.

SECTION 3.

Special Committees/Work Session Meetings

The Chair may appoint special committees as is deemed appropriate to carry out the duties and responsibilities of the Board. All special committees so assigned and appointed by the Chair shall serve for only the period deemed by the Chair. Any such special committee so designated shall operate pursuant to the following rules and procedures.

- a. The Committee shall have a minimum size of four members;
- b. The Committee shall have a quorum requirement of three members;
- c. The Committee shall designate an Acting Chair, by vote, in the event the Chair of the Board of Zoning and Planning is not present. A simple majority of the members present is required to designate an Acting Chair;
- d. The Committee shall vote on all issues before it, and shall transmit this vote to the Board of Zoning and Planning in those instances when its decision on the matter is not final. A simple majority vote of the members present will be sufficient to pass or fail an issue in those instances when the special committee's decision on the matter is final;

- e. The Committee shall attempt to ensure that a quorum is present by accepting membership substitutions from the roster of Board of Zoning and Planning members in the event two or more designated special committee members cannot attend the scheduled special committee meetings.
- f. The Board shall may hold a Work Session meeting at 6:30 p.m. on the first ~~Monday~~ Wednesday of each month prior to the regularly scheduled formal meeting. Should the first ~~Monday~~ Wednesday fall on a holiday, the Work Session shall be scheduled as deemed appropriate by the Board. The purpose of the Work Session is to review informal and formal proposals for information and feedback prior to or in conjunction with the filing of a formal application with the ~~Senior Planning Officer~~ Community Development Director. As deemed necessary, the Board may meet virtually in accordance with state law and open meetings requirements. The meeting shall be open to the public and include, at a minimum, a quorum of BZAP members.
- g. Items postponed to the next scheduled Work Session may be voted on at the Work Session if the majority of Board members present deem it to be appropriate.

SECTION 4

Administrative Requirements

a. Order of Business

The following is the general format to be used at all public hearings before the Board of Zoning and Planning for all matters before it:

1. The Chair shall take the chair at the hour appointed for the meeting of the Board and shall call the members to order and direct the Secretary to call the roll. The Chair shall then cause the minutes of the preceding meeting to be disposed of, unless otherwise ordered by the Board.
2. Each case shall be called separately and heard in the order listed on the current agenda, unless otherwise ordered by the Chair.
3. All persons who will give testimony in a public hearing shall

first be sworn by the following oath: "Do you swear to tell the truth, the whole truth and nothing but the truth?"

4. The applicant or applicant's representative shall proceed with a presentation of evidence which may include oral testimony, affidavits, depositions, maps, drawings, photographs, and any other documents or material relevant to the purpose of the hearing. The applicant may also call witnesses and question opponents. The applicant shall be expected to present evidence that authorizes the Board to grant the particular relief sought.
5. Persons other than the applicant, Community and Economic Development Department representatives and witnesses, may be permitted to speak if relevant to the outcome of the case and shall be heard if the outcome of the case might affect the property rights of such persons.
6. All persons who testify shall be subject to cross-examination.
7. The applicant shall be given the opportunity to rebut evidence offered in opposition to the applicant's case and to give a final presentation to the Board.
8. Board members may ask questions at any time. Other questions shall be directed to the Chair of the Board who may then redirect the question to the party requested to answer.
9. Hearings are intended to be informal. Therefore, strict rules of evidence shall not apply and procedures may vary somewhat as necessary to help ensure the applicant a fair hearing. The purpose of a hearing is to bring out sufficient information to permit the Board to arrive at a just result.
10. The Chair shall rule on all contested evidentiary or procedural matters. The Chair's decision shall be final.

b. Attendance

No member of the Board shall be permitted to leave the meeting

while in session except upon the consent of the Chair.

c. Preparation of Agenda

For all meetings of the Board, the Secretary shall prepare an Agenda of transactions to be considered by the Board and so far as practical the Board shall transact its business in the order called for on the Agenda. The ordering of Agenda items shall be determined by the Chair and the Secretary prior to the publication of the Agenda ~~in a newspaper of general circulation, which is required by Section 4(d) of these Rules.~~

d. Publication of Agenda

All matters appearing before the Board shall be published in agenda form and ~~may appear in one or more newspapers of general circulation in the City.~~ The agenda shall be available on the City's website, and posted in a conspicuous location at the Municipal ~~Building Services Center~~ at least ~~five~~ ten days before the date of the hearing. ~~Notice shall be available to the public upon request by e-mail, facsimile, voice message, or other electronic transmission at least five days before the date of the hearing.~~ The ~~notice~~ agenda shall state the time and place of the hearing and a summary of the proposed business.

~~The agenda shall be posted on the City's website every month.~~

e. Distribution of Agenda

The Secretary shall cause to be distributed to the Board prior to the meeting, the published Agenda with any and all requests and reports attached thereto.

f. Submittal Deadline

Unless otherwise approved by the Board on the yearly calendar, Agenda items shall be filed with the Secretary or his designee on the second last Monday of the month, on or before 5:00 p.m., preceding the month in which the case is to be heard by the Board of Zoning and Planning. Should the last Monday of the month fall on a holiday, the submittal deadline shall be the last Tuesday of the month, on or before 5:00 p.m. preceding the

month in which the case is to be heard by the Board of Zoning and Planning. Rezoning applications shall be filed one week prior to the submittal deadline. Failure to comply with this deadline shall cause the application to be deferred to the following month.

g. Submittal Requirements

Failure to comply with submittal requirements as outlined in Article 4.07 of the UDO may cause an application to be removed from that month's Board agenda for which it is filed, or not acted upon, and deferred until it meets the Board's submittal requirements. (See the Board's filing deadline requirements, Section 4, item f).

h. Notice

Notices of any requests for Board action shall be in accordance with the Unified Development Ordinance of the City of Upper Arlington, with the stipulation that in the case of written notices by the applicants, such notices shall be sent by Certified Mail - Return Receipt Requested, and such receipt or receipts shall be presented to the Secretary or the Board as proof of notice.

Any deviation from the requirements of this Section will be only by the Board waiving its rules as set forth in Section 9 of these Rules and Regulations.

i. Minutes

The Board shall keep minutes of its 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, all of which shall be filed in the Community and Economic Development Department and shall be a public record. The Board's proceedings will be recorded and a copy of the audio recording shall be maintained as a permanent public record in conformance with the City's Records Retention/Disposition Policy.

SECTION 5. **Vacation**

The Board may direct the time and duration of its vacation period, provided that no such vacation period shall exceed one (1) month in any calendar year.

SECTION 6. **Ex parte communication**

Board members shall not engage in ex parte communication. Ex parte communication is off-the-record contact between an applicant, representative, and a decision-maker in the course of an administrative review process. An ex parte contact may be viewed as tainting the administrative procedure. The purpose of this rule is to allow both sides the opportunity to hear and respond to information at the same time and in public.

SECTION 7. **Voting**

- a. Any member of the Board who is "present" but "abstains" from voting on any motion for adoption or passage shall have this privilege; however, in the case of a tie vote, the vote of the abstaining member shall be recorded as a negative vote.
- b. An amending motion made and seconded by a duly authorized member of the Board, shall be acted upon prior to any action on the original motion.
- c. The Chair shall have full voting rights on all matters before the Board.
- d. Board members shall abstain from voting on matters of direct personal or pecuniary interest not common to other members of the Board.

SECTION 8. **Reconsideration**

- a. Subject to the limitations in (8.b) below, any member who voted on the prevailing side of a motion may move a reconsideration of any action of the Board provided that the motion was not made later than the next regular meeting after such action was taken. No motion to reconsider shall be taken up more than once on any subject.

- b. Whenever the Board disapproves, or recommends disapproval, of an application on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the Board at a later time at the request of the applicant unless the applicant clearly demonstrates that:
 - 1. The Board's earlier denial of an identical, or substantially similar, request occurred at least one calendar year prior to the meeting date being requested for reconsideration, or
 - 2. Circumstances affecting the property that is the subject of the application have substantially changed, or
 - 3. New information is available that could not with reasonable diligence have been presented at a previous hearing. A request to be heard on this basis must be filed with the Senior Planning Officer within the 21-day time period for an appeal.
- c. Prior to placement on the Board's agenda for reconsideration, applicant is required to re-notify all property owners in accordance with the Unified Development Ordinance and Section 4(i) of these Rules.
- d. Notwithstanding Subsection (b), the Board may at any time consider a new application affecting the same property. A new application is one that differs in some substantial way from the one previously considered.

SECTION 9. **Secretary's Privileges**

The Secretary and his/her designees shall be entitled at all times to privileges on the floor for the purpose of speaking upon any question.

SECTION 10. **Suspension of Rules**

These Rules and Procedures may be suspended at any meeting of the Board by a vote of four (4) members and a vote of such suspension shall be taken by ayes and nays and shall be entered in the minutes.

SECTION 11. **Special Meetings**

The Secretary, Chair or any four (4) members may call special meetings of the Board ~~upon written notice served personally upon each member or left at his usual place of residence~~ at least twenty-four (24) hours before the time fixed for such meeting. The notice calling a special meeting shall state the subjects to be considered and such meeting shall be limited to a consideration of such subjects, except by unanimous consent of all members present. Public notice of any special Board meeting shall comply with Rules of Council as adopted by Ordinance No. 180-2004, as the same may be amended from time to time.

SECTION 12. **Questions of Parliamentary Procedure**

Questions of parliamentary procedure, not covered by these Rules and Procedures, shall be governed by the Rules of Council as adopted by Ordinance No. 180-2004, as the same may be amended from time to time.

SECTION 13. **Enforcement of Rules**

The Chair of the Board shall conduct the meeting in accordance with these Rules and Procedures and see to it that all members, City employees and other persons comply with these rules.

SECTION 14. **Resignation of a Member**

Resignation of a member of the Board shall not take effect until the resignation is filed with the President of the Upper Arlington City Council and the Secretary is so notified.

SECTION 15. **Absence**

Members unable to attend a meeting will, at the earliest possible opportunity, direct notification of the anticipated absence to the Secretary, Chair, or in extenuating circumstances, to another member.

SECTION 16. **Authority**

These Rules and Procedures have been adopted by the Upper Arlington Board of Zoning and Planning in accordance with the Rules of Council as adopted by Ordinance No. 180-2004, as the same may be amended

from time to time.

Date Adopted: April 4, 1983

Chair

Vice Chair

Attest:

Secretary

APPENDIX I

Dates Amended

July 18, 1983
June 17, 1985
January 20, 1986
May 19, 1986
November 17, 1986
October 17, 1988
September 21, 1992
January 18, 1996
November 21, 2005
March 26, 2012
January 6, 2014
November 16, 2020

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Updated ~~January 6, 2014~~ November 16, 2020