

METROPOLITAN BOARD OF ZONING APPEALS

RULES OF PROCEDURE

1. PURPOSE

The purpose of these rules is to provide for the orderly disposition of the business of the Metropolitan Board of Zoning Appeals (“BZA” or “Board”) where not otherwise provided for in the Metropolitan Code of Laws, Title 17, Zoning, hereafter referred as the "Metro Code” or “Code."

2. AUTHORITY

These rules are adopted pursuant to the authority vested in the Board by the Metropolitan Charter § 18.03, the Metropolitan Code of Laws § 17.40.180 *et seq.*, those other ordinances granting the Board specific authority, and Tennessee Code Annotated § 13-7-205 to -207.

3. OFFICERS AND DUTIES

- A. The Board shall elect from its members a Chair and a Vice-Chair, who shall each serve for one (1) year and may be re-elected upon the end of a term. Elections shall take place in December of each year. A majority of Board members present shall be required to elect a member to either position.
- B. The Chair shall preside over all meetings of the Board and decide points of order and procedure as necessary. The Chair shall have the right to debate and vote on any matter before the Board.
- C. The Vice Chair shall serve as Chair in the event of the absence or incapacity of the Chair. In the case of the resignation of the Chair, the Vice Chair shall serve until a new Chair is elected. In the absence of both the Chair and Vice Chair, an interim Chairperson shall be elected from those members present.

4. APPLICATION

- A. Any person who wishes to appeal or apply to the Board under the provisions of the Code must do so on forms provided for that purpose by the Department of Codes and Building Safety.
- B. Appellants must meet with one of the Zoning Examiners or the Zoning Administrator prior to filing an appeal in order for a preliminary zoning review to be conducted.

- C. All applications must be accompanied by a scaled drawn site plan. Site plans shall conform to the following standards:
1. The Board will only accept electronic site plans and elevation drawings in Adobe Acrobat (pdf) format.
 2. Site plans for uses other than one or two family residential and day care homes shall be drawn to an engineer's scale and be of professional quality.. All applicants are encouraged to consider if their applications would be best served by such site plans .
 3. All sign applications shall be accompanied by a drawing showing the proposed elevation and dimensions and shall be drawn to an engineer's scale and be of professional quality.
 4. Applicants are encouraged to consider whether a boundary survey and site build survey prepared by a licensed surveyor would aid in the review of their application.
- D. Appellants to the Board of Zoning Appeals shall provide all required information to the Staff by the filing deadline. Cases will not be placed on a docket by the Zoning Administrator until all required information is provided. In certain cases, the zoning administrator and staff will require additional information, including but not limited to professional site plans, boundary surveys, wind/light studies, or traffic studies, if such materials will be necessary for the Board to make a determination in a given case. The Board reserves the right to request additional materials as necessary.
- E. In order to provide information to the Board in a timely .manner, any drawings, correspondence or other documentation that appellants or opponents want the members of the Board to read prior to the public hearing must be received by the Staff no later than close of business on the Tuesday prior to the public hearing.
- F. Documentation provided within the time listed above will be forwarded by the Staff to the members of the Board. Any documentation the applicant wishes to provide to the Board after the deadline can be presented to the Board members by providing nine paper copies at the public hearing; however, the Board may elect to defer cases in order to review any materials received after the deadline.

5. RES JUDICATA

- A. The Board shall not consider, and the Department of Codes and Building Safety shall not accept for filing any application for a variance or a special exception permit which requests the same or similar relief as a previous application which involved the same property, regardless of who makes the application, for a period of six (6) months unless the Board establishes a different period of time. Provided, however, that the foregoing shall not apply where the request for relief was denied by operation law of per Metro Code § 17.40.240 due to Board attendance.
- B. The Board shall not consider, and the Department of Codes and Building Safety shall not accept for filing any appeal for a declaration of non-conforming status which has been heard on a previous application, regardless of who filed the appeal, within a period of six (6) months of a denial. Provided, however, that the foregoing shall not apply where the request for relief was denied by operation law of per Metro Code § 17.40.240 due to Board attendance.
- C. Any decision made pursuant to this rule shall be appealable to the Board on a case-to-case basis. The Board may disallow future re-filings of the same request if the Board finds that the appellant has repeatedly failed to prove their case.

6. CONFLICT OF INTEREST

- A. Any member of the Board who has direct or indirect interest in any property which is the subject matter of, or affected by, a decision of the Board shall be disqualified from participating in the discussion, decision, and/or proceedings of the Board in connection therewith as required by the Code in § 17.40.230.
- B. Each member of the Board shall conduct themselves in accordance with the Standards of Ethical Conduct as defined in the Metropolitan Code § 2.222.010 *et seq.* Any Board member who may have an interest in the issues in a given case shall publicly state that fact on the record at the beginning of the public hearing so that either party or other Board member might object to their further participation in the case.
- C. It shall be the policy of this Board that no member shall discuss the merits of any pending case with any person having an interest in the case prior to the public hearing. Any interested party wishing to provide written information to the Board prior to the public hearing (including electronic communication) must place such information in the public record through the Staff of the Board. If inadvertent contact does occur, the Board member shall disclose that contact in full prior to any action on the matter.

7. NOTICE REQUIREMENTS

- A. Pursuant to Metropolitan Code of Laws § 17.40.210, appellants are required to comply with the notice requirements in Article XV of Title 17 of the Metropolitan Code. Please contact the Board staff for specific information regarding notice compliance. Failure to comply will result in deferral of the public hearing.
- B. The Zoning Administrator shall notify councilmembers of all pending cases within their districts.
- C. In the interest of having informed stake holders in special exception cases, it is required that the appellant hold a public meeting at a geographically convenient place, date, and time in advance of their hearing. Appellant shall notify the district Councilmember and adjoining property owners within 1,000 feet of the subject property, using a mailing list provided by the Board's Staff, of such a meeting.
 - 1. At the public meeting the appellant shall furnish the following information: the name and contact information of the property owner or their representative, and a reasonable representation of their proposal.
 - 2. Applicants shall document to the Board that this meeting requirement has been met. Failure to comply shall result in deferral of the case.

8. PROCEDURE

- A. All meetings of the Board shall be open to the public and otherwise conducted pursuant to T.C.A § 8-44-101 *et seq.*
- B. Meetings shall be scheduled for 1 PM on the first and third Thursday of each month, each calendar year, unless otherwise changed by the Board. When meeting dates conflict with holidays or political elections, the Zoning Administrator may schedule only one meeting within a month to avoid conflict with these dates.
- C. In compliance with M.C.L. §§ 2.24.146 and 2.68.020, the agenda for each meeting shall be sent to the Metro Information Technology Services Department (ITS) to be posted on the Commission website and Metro calendar. The agenda shall be sent in a timely manner, and at least five days prior to the meeting, so as to give adequate notice of the meeting. Recordings of the Board meetings shall serve as minutes and be made available on the BZA webpage for each meeting.

- D. Meetings shall be held in the Sonny West Conference Center in the Howard Office Building located at 700 President Ronald Reagan Way unless an alternate site is needed due to circumstances beyond the control of the Board's Staff.
- E. The presence of four (4) members of the Board shall constitute a quorum and represent the minimum number of members who must be present to conduct business on a case. Metropolitan Code of Laws § 17.40.240.
- F. Pursuant to the Metropolitan Charter § 18.10, the Board, acting by and through the Zoning Administrator, may compel the attendance of witnesses and the production of books, papers, and records pertinent to a case.
- G. The witnesses appearing before the Board in a public hearing shall not be required to testify under oath, but all witnesses shall be made aware that, if it is determined that false information has been presented to the Board, the Board has the right to reconsider its decision.

9. HEARING

- A. Unless otherwise changed by the Board for cause, each case shall be taken in the order listed on the agenda. However, the Board Chair or Zoning Administrator may arrange the agenda to accommodate any scheduling needs of the Staff or the Board.
- B. As a courtesy to elected officials, the Board may, as a preliminary matter, allow the council members presenting information regarding a case to make a statement at the beginning of the meeting if he or she cannot stay for the public hearing and make a statement at that time. That testimony shall be considered a part of the record in the pertinent case. If a council person is advocating for or against the applicant, they can speak at the beginning of the meeting or during the public hearing for that case during the time set aside for that position, however, the time the council person uses will be assessed against the position on whose behalf they are speaking.
- C. The Code shall be considered a part of the record in every case coming before the Board. Relevant sections will not be read verbatim into the record unless the parties make a request. The Code will be made a part of the proceedings before the Board upon any appeal to a Court with proper jurisdiction as if read verbatim into the record.
- D. Deferred Cases. Cases that were deferred by the Board prior to the public hearing at the request of the applicant may be heard at the end of the regularly scheduled docket when rescheduled. Cases deferred by the Board itself may be heard at the beginning of the regularly scheduled

docket when rescheduled unless the Board directs otherwise in its deferral motion.

- E. Consent Agenda. Prior to a public hearing, a Board member shall review the case record with a Staff member. If the reviewing Board member feels that the record indicates that the application meets the criteria for which they have applied and testimony from the appellant would not materially alter facts in the case, the reviewing member may, at the public hearing, recommend that the case be moved to the consent agenda. Should opposition be present, the case shall be removed from the consent agenda and the case will be heard in the order it has been scheduled.
- F. The Board will base its decision only on information presented in public hearing and in the record; however, a Board member may visit a site that is the subject of an appeal in order to gather information. Said visit shall be disclosed in the public hearing and any information learned shall be entered into the record by the Board member. In the event two or more members visit a project site at the same time, per Tenn. Code Ann. § 8-44-102(b)(2), they shall not communicate regarding the case while at the site.
- G. Each case shall be introduced by the Zoning Administrator, or their designee, and the presentation shall include:
 - 1. A brief explanation of why the case is before the Board, including relevant Code sections.
 - 2. A presentation of maps and photographs, and other exhibits, if necessary.
- H. The appellant shall then present their case.
 - 1. The appellant and any co-presenters or members of the public in support of appellant shall first state their name and address, then present their case regarding why the relief sought should be granted.
 - 2. Appellants and their co-presenters and supporters shall have up to five (5) minutes total to present their case if there is no opposition. If opposition is present, they shall have up to ten (10) minutes total to present, of which time may be reserved for rebuttal.

- I. Those members of the public opposed to the appeal or application, if any, shall then present their case.
 - 1. Presenters shall state their name and address, then present their case regarding why the relief sought should not be granted.
 - 2. All those members of the public opposed to the appellant's case collectively have up to ten (10) minutes to speak.
- J. For cases involving an appeal of the actions or interpretations of the Zoning Administrator, the following procedure shall be followed:
 - 1. The appellant shall present first along with any parties in support of the appellant's appeal. The appellant and supporters may speak for up to ten (10) minutes, of which any remaining time may be reserved for rebuttal. If no parties are present to speak in support of the zoning administrator, the appellant may speak for five (5) minutes and reserve time for rebuttal.
 - 2. The Zoning Administrator or their designee shall then present for up to five (5) minutes.
 - 3. All affected parties in support of the Zoning Administrator may collectively speak for up to five (5) minutes total.
 - 4. The appellant shall have a period of rebuttal if any of their allotted time remains and has been reserved.
- K. Additional Public Hearing procedures:
 - 1. Either the appellant or opposition may petition the Board for additional time to present their case. The petitioner must state which extenuating circumstances exist that would prevent the petitioner from completing their case record in the allotted time.
 - 2. Should the Board grant such a request, each side of the case shall enjoy equal time. Staff shall present requests after completing opening remarks for the Board to consider and vote upon.

3. All exhibits presented to the Board for consideration must be submitted as evidence and made part of the record.
4. Any member of the Board may directly question the appellant or any presenter or member of the public at any time during their testimony or recall them to respond to questions at a later time. The response time for such questions will not count against the presenter's allotted presentation time.
5. Upon the conclusion of all of the testimony and evidence, the public hearing will be closed, and no further evidence may be admitted except as Board may permit on motion.
6. The Board may re-open public hearing in order to receive additional information from presenters and witnesses in response to specific questions posed by the Board. The Zoning Administrator may also clarify key issues to ensure the Board is fully informed regarding each case.

10. CASE DECISIONS

- A. Upon conclusion of the public hearing of each case, the Board shall discuss and vote on that case.
- B. After discussion by the members and upon motion, an application shall be granted or denied if it receives four (4) concurring votes. If a motion fails to obtain four votes, the case shall be deferred to the next Board meeting, at which meeting those Board members not present will be permitted to vote if they have reviewed the record and viewed the recording of the prior public hearing and original Board deliberations. Metropolitan Code of Laws § 17.40.240.
- C. In any decision made by the Board on an application for a variance, the Board shall indicate the specific hardship warranting the granting of a variance and any conditions the Board has imposed in accordance with the granting of the variance.
- D. In any decision made by the Board on an application for a special exception permit, the Board shall state that the application meets all conditions of the special exception and shall state clearly any other specific conditions imposed in granting such an exception.

11. WITHDRAW OR FAILURE TO APPEAR

- A. Any appellant may withdraw their application once, without prejudice, at any time prior to the public hearing on the case. A public hearing is deemed to have begun after any opening remarks have been made by the appellant.
- B. If a second application is withdrawn, the withdrawal shall be with prejudice; the Board will not consider, and the Department of Codes and Building Safety shall not accept for filing, the same or similar application by anyone relating to the same property for six (6) months from the date of the withdrawal.
- C. In any case where the appellant has failed to appear, the Board shall dismiss the application for lack of prosecution. The appellant is eligible to re-apply and pay a new filing fee, and the case will be readvertised for the next available docket after dismissal.

12. POST HEARING REQUESTS

A. Request for Rehearing

- 1. Any aggrieved party may request permission for a rehearing within sixty (60) days of the public hearing.
- 2. No such request to grant a rehearing shall be considered unless new evidence is submitted which could not have reasonably been presented at the previous hearing.
- 3. The request must be in writing, and it must recite with specificity the new evidence and the reasons for the request. The request may be accompanied by plans or diagrams, if necessary.
- 4. Motions to Rehear will be deliberated on and decided based solely upon filings. No oral arguments or live presentations will be made to the Board in conjunction with the Motion to Rehear.
- 5. A request for a rehearing shall be acted upon by motion of a member of the Board who voted in the majority as to the disposition of the case.

6. The affirmative vote of four (4) members for the motion is necessary to grant a rehearing.
 7. If the request is denied, an appropriate order shall be prepared by the Zoning Administrator and sent to the parties making the request.
 8. If the request is granted, an appropriate order shall be prepared by the Zoning Administrator, a copy shall be sent to all the parties, and the case will be set for another public hearing upon receipt of the new filing fee and compliance with appropriate public notice requirements by the moving party.
- B. Appeal to Court. Any aggrieved party may within sixty (60) days of the entry of an order appeal a finding of the Board under common law writ of certiorari in accordance with Tenn. Code Ann. § 27-8-101 *et seq.*
- C. Show Cause Hearings: In cases where violations persist and a show cause order has been issued, the appellant shall be required to appear before the Board and show cause as to why there has been a failure to comply with the Board's order and why such order should not be revoked or amended by the Board.

13. ENTRY OF ORDERS

- A. As soon as possible after the decision of the Board in a particular case, the Zoning Administrator or designee shall enter an order describing the action taken, the reasons therefore, and vote.
- B. The order shall be dated and signed by both the Zoning Administrator and the Chair; however, the Zoning Administrator is hereby authorized to affix the Chair's signature to the order by use of a stamp bearing a facsimile of the Chair's signature.
- C. After the Order has been duly executed, a copy shall be placed in the Order Book, the Board's file, and the Map and Parcel records of the Department of Codes and Building Safety.
- D. A copy of the Order shall be sent to the appellant informing them of the decision of the Board.

14. RECORDS

Each action of the Board shall be recorded with an order and supporting documentation shall be retained in the electronic appeal file. The entire proceedings shall be recorded and maintained in accordance with the retention policies adopted by the Davidson County Public Records Commission.

15. ABSENCE OF A RULE

When an issue arises that is not specifically covered by these rules, the Board will be governed by Robert's Rules of Order.

16. SPECIAL MEETINGS

A special meeting may be called by the Chair or upon the written request of three (3) or more members of the Board. Written notification of the time, place, and purpose of the meeting shall be delivered to each member of the Board at least five (5) days prior to the meeting and the meeting shall be publicly noticed in the same manner as a regular meeting. At special meetings, only business designated as the purpose of the meeting may be transacted.

17. AMENDMENTS

These rules may be amended at any regular or special meeting of the Board by affirmative vote of four (4) members provided all members have been notified of the amendment at least ten (10) days prior to the meeting.

18. INTERPRETATION OF THE BOARD'S RULES

The Board is the final authority as to the meaning of these rules. The Board may, from time to time, suspend these rules for extraordinary cases, setting out the reasons therefore.

19. FILING AND EFFECTIVE DATE

These rules shall become effective, after adoption, upon the filing of these rules with Metropolitan Clerk.

20. REPEAL OF PREVIOUS RULES OF PROCEDURE

Any other Rules of Procedure previously adopted by the Board are hereby repealed.

APPROVED AND ADOPTED ON THIS 17th DAY OF APRIL 2025.

Chair

Metropolitan Zoning Administrator