



OXFORD BOARD OF ZONING APPEALS

Meeting Minutes

Tuesday, June 24, 2025

[Link for website video here](#)

Meeting procedure: The Board of Zoning Appeals is a quasi-judicial Board. Our primary function is to hear testimony and issue decisions. Unlike other City boards and commissions, we only hear relevant, sworn testimony from the Applicant, his/her duly appointed agent or attorney, and any other person with standing to testify in a particular matter. The Applicant has the right to cross-examine any testimony given. Our hearings are open to public attendance, but public comment, opinion and discussion are not considered testimony and will not be heard.

Please wait until you are recognized by the Chair, state your name and address so that your comments may be properly recorded. Applicants are to limit their testimony to fifteen (15) minutes, including any information presented by his/her duly appointed agent or attorney. This time limit may be extended if the Board requests or approves further testimony. Other persons with standing are encouraged to testify and ask questions about the nature of the appeal, but must be acknowledged by the Chair prior to speaking.

Roll Call

Philip Russo, Chair

Matt Wyatt

Steve Chaffin, Secretary

Baljinnyam Dashdorj

Time: 0:16

A regular meeting of the Oxford Board of Zoning Appeals was called to order by Chair Philip Russo on Tuesday, June 24, 2025 at 6:30 p.m.

Members in attendance were Steve Chaffin, Matt Wyatt, and Baljinnyam Dashdorj

Members excused: None

Staff Members in Attendance

Mr. Zachary Moore, City Planner/GIS Coordinator, Mr. Christopher Conard, Law Director, Ms. Eunike Miller, Administrative Assistant

Staff Members Excused

Mr. Sam Perry, Director, Community Development

Approval of January 28, 2025 Minutes of the Regular Meeting

Time: 0:35

Motion – To approve the minutes as written

(Voice Vote) 1st Mr. Wyatt 2nd Mr. Dashdorj

AYE: (4)
NAY: (0)
ABS: (0)

New Business

BZA-2025-01

Time: 1:00

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1. 124 Pin Oak Drive, VARIANCES to Section 1143.01(c)(2)(B) minimum rear yard depth and Section 1143.01(c)(2)(C) minimum side yard width, Scott Webb Architect, Applicant/Agent

Mr. Zachary Moore presented the staff report and responded to questions from the board members.

Mr. Alan Kyger, property owner, shared some thoughts on why they purchased the property and what the proposed plan is.

TO: Oxford Board of Zoning Appeals

FROM: Zachary Moore, AICP
City Planner / GIS Coordinator

DATE: August 21, 2025

RE: **Amendments to BZA Rules of Procedure**

INTRODUCTION

A series of proposed amendments to the “Rules of Procedure of the Board of Zoning Appeals of Oxford, Ohio,” sometimes colloquially referred to as the “BZA Bylaws,” are being brought forward for consideration by the Board. The primary impetus for amending the Bylaws is to acknowledge the possibility for the Board to engage in private deliberations as well as approve the findings of fact attributed to a decision. In addition, there are several other inconsistencies/problems within the present language that deserve attention and possible fixing.

Attachments to this memo include the following:

- **BZA Rules of Procedure Proposed Amendments, August 2025**
 - The last amendment to the BZA Bylaws occurred in October 2021.
 - Staff has marked up the October 2021 copy of the Bylaws as follows:
 - **Blue text** constitutes newly proposed additions.
 - ~~Red struck-through text~~ constitutes existing text proposed for deletion.
 - Work on proposed changes has been a joint effort between myself and Law Director Chris Conard.
 - Any red or blue text appearing in the document has been vetted by Mr. Conard, with the exception of any red or blue text **highlighted in yellow** – these are recent changes I have made, which I am happy to explain the rationale for during Board discussion.
- **Proposed Text Amendments to Section 1139.02 of the Oxford Zoning Code**
 - These amendments are intended to be complementary to the changes being proposed for the Bylaws, thus bringing the Rules into greater alignment with language embedded in the Zoning Code.
 - The BZA does not have authority to approve these particular changes, as text amendments must be adopted through the legislative process involving Planning Commission and Council.
 - This document is being provided for contextual purposes only. Staff has the ability to initiate these amendments at a later date.

LAW DIRECTOR COMMENTARY

Commentary appearing below *in italics* comes directly from Law Director Chris Conard:

Narrative for the Text Amendment in Sec. 1139.02 is as follows:

*Section 1139.02 of the Oxford Codified Ordinance was found to contain an error. The code when amended did allow the BZA to consider evidence of past variance cases. In *Conrad v. City of Oxford*, 2017 Ohio 9089 the Court of Appeals reversed a decision of the Oxford BZA because the Board considered evidence outside the record. By adding the text to Section 1139.02, the Code will provide clear guidance to the Board and parties that evidence of other variance requests must be presented as evidence in the record and not during deliberations.*

*“Finally, the BZA’s eighth finding of fact indicates that it considered no other factor in reaching its decision. This finding is not supported by the record. At the hearing, one Board member expressly stated that the variance should be denied, in part, because the BZA previously denied a variance request submitted by a nearby fraternity house. That petition is not in the record, and there is no evidence that the variance request is in any way similar to the Conrads’. Even if it was, it is not relevant to this case, where the practical difficulties test requires the BZA to consider whether the lot width restriction is reasonable as applied to the Conrads, not another property owner. [**3]*

The Court finds that the BZA’s decision illegally strayed from the practical difficulties test by considering a previous ruling related to a different property. It is unclear whether the BZA would have actually denied the variance had it not done so. Having found that the BZA’s decision was based upon a factor outside the scope of its authority, the Court remands this matter to the BZA for a new hearing. In light of this decision, it is not necessary to consider whether the BZA has disparately enforced the Oxford Zoning Code in similar situations.”

[*Conrad v. City of Oxford, 2017-Ohio-9089, P3*](#)

Amendments to the Rules of Procedure and Deliberations

There are a number of proposed changes to the Rule of Procedure for the BZA. In some instances, staff noticed typographical errors. In other instances, staff practices have changed. The most significant change pertains to deliberations. The Board has historically deliberated in public. Board deliberations are not subject to the Open Meetings Act because deliberations are quasi-judicial. The paragraph below explains the reasons why quasi-judicial deliberations may be conducted in private.

*Public bodies whose responsibilities include adjudicative duties, such as boards of tax appeals and state professional licensing boards, are considered “quasi-judicial.” The Supreme Court of Ohio has determined that public bodies conducting quasi-judicial hearings, “like all judicial bodies, [require] privacy to deliberate, i.e., to evaluate and resolve, the disputes.” *TBC Westlake v. Hamilton Cty. Bd. of Revision*, 81 Ohio St.3d 58, 62 (1998). Quasi-judicial proceedings and the deliberations of public bodies when acting in their quasi-judicial capacities are not “meetings” and are not subject to the Open Meetings Act. *TBC Westlake v. Hamilton Cty. Bd. of Revision*, 81 Ohio St.3d 58, 62 (1998); *State ex rel. Ross v. Crawford Cty. Bd. of Elections*, 2010-Ohio-2167, ¶ 32 (board of elections proceeding determining whether to remove a candidate from the ballot was a quasi-judicial proceeding and the Open Meetings Act did not apply); *Pennell v. Brown Twp.*, 2016-Ohio-2652, ¶ 34-37 (5th Dist.) (board of zoning appeals hearing was quasi-judicial and Open Meetings Act did not apply); *Wightman v. Ohio Real Estate Comm.*, 2017-Ohio-756, ¶ 26 (10th Dist.) (state professional licensing board was quasi-judicial and Open Meetings Act did not apply); *Surber v. Hines*, 2024-Ohio-95, ¶ 14 (2d Dist.) (because an adjudicatory proceeding before board of zoning appeals is quasi-judicial in nature, its members’ deliberations, both before and after the commencement of the hearing, are not subject to the Open Meetings Act). Accordingly, when a public*

<https://cityofoxfordoh.sharepoint.com/sites/Boards-and-Commissions/Shared Documents/BZA/2025/BZA Rules Amendments Memo.docx>

body is acting in its quasi-judicial capacity, the public body does not have to vote publicly to adjourn for deliberations or to take action following those deliberations. 3 State ex rel. Ross v. Crawford Cty. Bd. of Elections, 2010-Ohio-2167 (because the Open Meetings Act did not apply to the elections board's quasi-judicial proceeding, there was no violation in failing to publicly vote on whether to adjourn the public hearing to deliberate, and failing to publicly vote on the matters at issue following deliberations); In re Application for Additional Use of Property v. Allen Twp. Zoning Bd. of Appeals, 2013-Ohio-722, ¶ 15 (6th Dist.) (board of zoning appeals was acting in its quasi-judicial capacity in reviewing applications for conditional use); Beachland Enters., Inc. v. Cleveland Bd. of Rev., 2013-Ohio-5585, ¶ 44-46 (8th Dist.) (board of review was acting in quasi-judicial capacity in adjudicating tax dispute between the city commissioner of assessments and licenses and the taxpayer); Electronic Classroom of Tomorrow v. Ohio State Bd. of Edn., 2018-Ohio-716, ¶ 20-28 (10th Dist.) (consideration of hearing officer's recommendation was a quasi-judicial function); Howard v. Ohio State Racing Comm., 2019-Ohio-4013, ¶ 46 (10th Dist.) (Ohio State Racing Commission not required to deliberate in public because meetings were quasi-judicial); Nosse v. Kirtland, 2022-Ohio-4161, ¶ 28 (11th Dist.) (public hearing on police chief's removal was a quasi-judicial proceeding).

The propose rule changes are intended to allow the Board to chose when to enter into private deliberations. In addition, the Board sometimes needs to issue more detailed findings of fact when it decides a case. Since a written decision must be reviewed by the Board before it is issued, there may be times the Board cannot finalize a decision until the Board agrees that a written decision correctly reflects the Board findings.

**RULES OF PROCEDURE
OF THE BOARD OF ZONING APPEALS OF OXFORD, OHIO –**

ARTICLE I – MEMBERSHIP

The Board of Zoning Appeals is established by Section ~~8.05~~~~8.08~~ of the Oxford Charter. Membership consists of five citizens serving three-year, staggered terms.

ARTICLE II - JURISDICTION AND FUNCTION

According to Section ~~8.06~~~~8.09~~ of Oxford’s Charter, “The Board shall have the power to hear and determine appeals from refusal of building permits and to permit exceptions to and variations from the zoning regulations in individual cases as may be required to afford justice and avoid unreasonable hardships to property owners. The standards in all instances to be applied by the Board shall be established by Ordinance of Council.”

The Decision Standards have been enacted by Council, and they appear as Section 1139.02(c)(2) of Oxford’s Code of Ordinances. A copy of Section 1139.02 (c)(2) appears as Appendix “A” to these Rules and Procedures.

ARTICLE III – OFFICERS

Section 1 - At the first meeting of each year, the Board shall elect one of its members as Chair, one as Vice-Chair, and one as Executive Secretary. At the first meeting of each year, the Law Director or his or her designee shall administer an oath of office to all members of the Board.

Section 2 - The Chair shall preside at meetings of the Board, call special meetings, and perform such other duties commonly prescribed to such office.

Section 3 - The Vice-Chair shall perform the same duties as the Chair in his/her absence.

Section 4 - In the event the Chair and Vice-Chair are absent from a meeting, the three remaining members shall select a Chair Pro-Tem who shall perform the same duties as the Chair for the balance of the meeting.

Section 5 - The Executive Secretary shall present the minutes of each meeting for approval at the next meeting and attest to the Board’s approval of the minutes.

ARTICLE IV – MEETINGS

Section 1 - The regular meetings of the Board will typically be held in the Oxford Courthouse or other designated location on the fourth Tuesday of each month on the call of the Chair. The regular meeting date may occasionally change at the direction of the Board with public notice of the meeting. Special meetings may be called by the Chair, or by two (2) members of the Board, provided that special meetings must be called by email or other form of written communication ~~the delivering of a written notice thereof~~ to each Board member, or the residence of each member, and to those news media that have requested notification, at least twenty-four (24) hours prior to the time set for the special meeting. Said notice shall contain information as to the date, time, place and purpose of the meeting. No action shall be taken by the Board at a special meeting upon any matter not listed upon said special meeting notice (See appendix “B”).

ARTICLE V – VOTING

Section 1 - No motion to over-rule the decision of an administrative office of the City shall be adopted

except by the affirmative vote of three members of this Board (Section 8.058.08 of Oxford Charter). No variance shall be approved except by the affirmative vote of three members of this Board.

Section 2 - A majority vote of those members present shall be necessary to carry out all other regular business of the Board and a quorum of three members shall be necessary to conduct business and to constitute an official meeting of the Board.

Section 3 - The Chair shall vote in all matters under consideration by the Board.

Section 4 - No Board member shall participate in the discussion or vote in any matter in which the member has a personal interest. That person shall recuse themselves from the Board for that portion of the meeting in which the member has an interest.

Section 5 - A record shall be made in the minutes showing the vote of each member on each question, or, if absent or failing to vote, indicating such fact.

Section 6 - The Board of Zoning Appeals shall base its decision only upon Section 1129.11 or the Decision Standards in Chapter 1139. A copy of Section 1139.02(c)(2) appears as Appendix A to these Rules of Procedures.

ARTICLE VI - APPEALS PROCEDURE

Section 1 - (By Whom)

- (a) An appeal and supporting documentation as provided for in Chapter 1129 and 1139 of the Planning & Zoning Code may be made to the Board by any person who has been denied a building permit, or who desires an exception to or variance from the Planning and Zoning Code, or by any officer, department, board or bureau of the City of Oxford affected by a decision of the Zoning Administrator within 30 days of the date of the Zoning Administrator decision.
- (b) If the appellant represents the owner or occupant authority of the premises under consideration, the appellant shall document on the appeal that authority to represent that owner or occupant.
- (c) The application for an appeal shall be submitted pursuant to Chapter 1129 and 1139 of the Planning & Zoning Code. The Board will not hear any appeal on an application the Board deems incomplete under Section 1139.02
- (d) Instruction sheets may be prepared and approved by the Board for the guidance of appellants and copies of these Rules of Procedure shall be available to the public without charge at all times in the office of the Zoning Administrator.

Section 2 - (Action on Application)

- (a) The Zoning Administrator shall notify ~~by regular mail the appellant and~~ all owners of property within 200 feet of the property in question as to the date, time, place and purpose of the hearing at least 10 days prior to the hearing. ~~The notice shall provide a form on which comments may be submitted to the Board of Zoning Appeals.~~ This notice is not jurisdictional and is provided for only as a matter of courtesy. Failure by the Zoning Administrator to mail such notice or failure by a land owner described above to receive such notice shall not invalidate any action resulting from the public hearing.

The Administrator shall also cause an official legal notice, which is jurisdictional, containing the date, time, place and purpose of the hearing to be published once in a local newspaper of general circulation at least 7 days prior to the hearing. At least 7 days prior to the public hearing, the applicant shall post a sign on the site, provided by the City, along each, but not in, the public right-of-way that abuts the site and at other

locations or intersections near or leading to the site in the right-of-way, at the discretion of the Zoning Administrator. The signs shall state that the site is the subject of a public hearing and shall list the type, time, and place of the hearing, ~~and shall be legible from the public right of way.~~ This is a courtesy notice. Failure by the Zoning Administrator to provide such signs as described shall not invalidate any action resulting from the public hearing. Removal of such signs, once set, shall be a violation of this Code in addition to any other laws against their removal that may apply.

- (b) The Zoning Administrator shall transmit to the Board, ~~approximately one week prior to the meeting or as soon thereafter as possible,~~ the appeal or variance application and all papers or information required or necessary for proper hearing of the matter before the Board no less than four days before the hearing. ~~appeal, and copies as required shall be sent to all Board members.~~
- (c) An appellant may, at his or her request, postpone an application that has been submitted, but not yet been heard, if a hard copy letter stating such request is submitted to and acknowledged by the Zoning Administrator at least seven (7) days prior to the scheduled meeting. This allows adequate time for rescheduling meetings and/or amending agendas as appropriate. In the case of unexpected emergencies resulting in a postponement request less than 7 days prior to the hearing, the Administrator and the Chair or Vice-Chair of BZA shall allow flexibility. A postponement may result in an additional fee paid to the City.

Section 3 - (Hearings)

- (a) The Board of Zoning Appeals shall base its review of a variance application upon the complete application, upon any staff report, and upon any relevant and credible public testimony and evidence presented during the adjudication hearing. If the Board of Zoning Appeals finds that the information provided is insufficient to make a determination, it may suspend its review until sufficient information has been provided.
- (b) All meetings and hearings shall be open to the public, provided, however, that hearings are adjudicative in nature and are not a forum open to public comment and discussion. Public participation in meetings will be limited as set forth in subsection (p), below.
- (c) The Applicant shall limit his/her testimony to fifteen (15) minutes including any information presented by his/her duly appointed agent or attorney. The Chair or Vice-Chair may allow additional time, if requested by the applicant.
- (d) For the purposes of these Rules of Procedure, a person has standing to testify at an adjudication hearing before the Board, with or without counsel, if that person has a substantial right that will be directly affected, in a manner that is different from the effect on the general public, by the determination under consideration by the Board.
- (e) All interested parties with standing shall be permitted to appear and be heard in person, or by his/her agent or attorney, in opposition to the final order, adjudication, or decision. The Board shall have the right to dismiss the appeal if the appellant or his/her agent or attorney is not present at the hearing.
- (f) The interested party with standing shall present his/her position, arguments, and contentions.
- (g) The interested party with standing shall be allowed to cross-examine witnesses purporting to refute his/her position, arguments, and contentions.
- (h) The interested party with standing shall be allowed to offer evidence to refute evidence and testimony offered in opposition to his/her position, arguments, and contentions.
- (i) The interested party with standing shall be allowed to proffer any such opposing evidence and testimony into the record, if the admission of it is denied by the officer or body appealed from.

- (j) All testimony adduced shall be given under oath.
- (k) The Zoning Administrator will present and explain the case, setting forth the reasons for the Board.
- ~~(l) The Board of Zoning Appeals shall have prepared minutes of the proceedings containing a report of all evidence admitted or proffered by the Board.~~
- (m) Any person with standing shall have the right to ask questions about the subject of the appeal.
- (mn) At the request of the appellant or the Zoning Administrator and/or on the motion of the Board, the hearing may be postponed for further evidence or information. Such postponement shall be granted or denied in the sole discretion of the Board, and any postponement of a hearing, once commenced, shall **not** be for more than 45 days, except with a written permission of both the Zoning Administrator and the appellant.
- ~~(o) The Zoning Administrator or Board shall file with the minutes, conclusions of facts supporting the final order, adjudication, or decision appealed from.~~
- ~~(p) At the conclusion of the hearing or hearings the Board will discuss and vote on each appeal and conduct the business section of the meeting to take care of items on the agenda. The public may not participate in this section of the meeting except upon request of the Chair or any member of the Board.~~
- ~~(q) The Board shall keep a record of its proceeding. Findings of Fact shall be included in the minutes of each case of a requested variation or appeal, and the reasons for approving or denying such variation or appeal shall be specified. All records of proceeding findings, determinations and actions of the Board shall be filed immediately in the Zoning Administrator's office and shall be retained for one year.~~

Section 4 – (Deliberations)

- (a) When considering **appeal or variance** requests, the Board is acting in a quasi-judicial proceeding. Under Ohio law, Board deliberation by the public body when acting in their quasi-judicial capacities are not “meetings” and are not subject to the Open Meetings Act. Deliberations by the Board are not required to be public. For this reason, the board may at its sole discretion upon motion, second and approval of the majority of the Board members present that constitute a quorum, enter into private deliberations and voting.

Section 54 - (Following DeliberationsHearing)

- (a) The Board of Zoning Appeals shall grant, grant with conditions, or deny a variance application as presented and shall clearly state the findings of fact upon which its decision is based.
- (b) The Board shall keep a record of its proceedings. All records of proceeding findings, determinations and actions of the Board shall be filed in the Zoning Administrator's office.~~The Zoning Administrator and/or the Zoning Administrator's Assistant shall inform the appellant by letter as soon as possible following the hearing of the decision of the Board. The Board's decision shall not become final until the expiration of five (5) days from the date such decision is made unless the Board shall certify otherwise.~~
- (c) The Board shall issue a decision clearly stating the finding of facts upon which its decision is based. The Board may issue a decision orally memorialized by a letter from the Zoning Administrator and/or the Zoning Administrator's Assistant sent within ten (10) days after the Board votes. In its sole discretion, the Board may continue its deliberations to the next regularly scheduled meeting to approve its written decision that shall be signed by the Board Chair journalizing the Board's decision.
- (de) The Zoning Administrator shall issue permits to permit the action for which a variance was sought per Chapter 1139.
- (ed) No order of the Board permitting erection or alteration of a building or the use of a building or premises shall be valid for a period longer than twelve (12) ~~six (6)~~ months,

and upon the expiration of such period shall automatically be deemed revoked, unless a building permit for such erection or alterations is obtained and the work is started within such period, or, where no erection or alteration is necessary, the permitted use is established within such period, or an extension is requested in writing and granted by the Board.

- (f) No application for a variance that is substantially similar to an application that has been denied or granted, wholly or in part, or revoked, shall be submitted to the BZA for a decision per Chapter 1139.

APPENDIX “A”

1139.02(c)(2) Decision Standards.

Variations shall be granted only upon a determination that practical difficulties exist with respect to the property in question that would render strict application of the Planning and Zoning Code inequitable. This determination shall be made without regard to the existence of variations and nonconformities on other land, sites, or structures not presently under consideration, [unless evidence is introduced into the record for the purpose of showing a variance was previously granted or denied on a similarly situated property.](#)

In determining whether practical difficulties exist sufficient to warrant a variance, the Board shall consider and weigh the following factors:

- a. Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;
- b. Whether the variance is substantial;
- c. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
- d. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage);
- e. Whether the property owner purchased the property with knowledge of the zoning restriction;
- f. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;
- g. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
- h. Any other relevant factor.

APPENDIX “B”

RULES AS REQUIRED BY R.C. 121.22, COMMONLY KNOWN AS THE SUNSHINE LAW

SECTION 1: All meetings of the Board of Zoning Appeals, other than authorized Executive Sessions, shall be open to public attendance.

SECTION 2: The Board will fully comply with both the letter and the spirit of R.C. 121.22.

SECTION 3: The regularly scheduled meetings of this body shall be held on the fourth Tuesday of each month in the Oxford Courthouse. The regular meeting date may occasionally change at the direction of the Board with public notice. Within the context of this rule, a special meeting is deemed to be any meeting scheduled or called for a date or place or time other than as herein above specified. Such special meeting, as so defined solely for the purpose of this rule, may be for the purpose of:

- (1) Continuing or commencing a regular meeting of the Board in discussing and acting upon all such business as may come before the Body; or
- (2) A true Special Meeting within the context of parliamentary definition wherein the purpose of the meeting shall be to consider only specific and enumerated matters, and in which action will not be taken on matters unrelated to the matter, or matters, for which such a meeting is held. No special meeting, as defined herein, shall be held unless the Zoning Administrator shall have given at least 24 hours advanced notice of the date, time and place and purpose of such meeting, to those news media that have requested notification except in the event of an emergency. An emergency exists when immediate official action is necessary and in that event the member, or members, calling such a meeting shall immediately notify such news media as have requested notification of the

- date, time, place and purpose of such meeting.
- (3) Any person may determine the date, time and place of regularly scheduled meetings by phoning or contacting the Zoning Administrator at the City Building.
 - (4) Any person may determine the date, time, place and purpose of special meeting, as defined herein, by making such a request, in writing, to the Zoning Administrator and sending forth their name, address and telephone number. The Zoning Administrator shall notify such person of the date, time, place and purpose of special meetings, either by mail or telephone and will in any case endeavor, with all reasonable effort and dispatch, to make such notification immediately.

When time permits reasonable anticipation of timely mail delivery, the Zoning Administrator may notify such person by mail. When, in the judgment of the Zoning Administrator, it seems reasonable to believe mail notification will not be timely, the Zoning Administrator will make all reasonable efforts to contact such person by telephone. Long distance calls will only be placed collect.

SECTION 4: Any person desiring information as to any specific business to be discussed at a meeting, may obtain advance notification of the proposed discussion by securing a copy of the meeting agenda by any or all of the following methods:

- (1) Agendas for regularly scheduled meetings will be available, without charge, at the Police Department Dispatcher's office on the Saturday, Sunday, Monday or Tuesday preceding the regularly scheduled meeting.
- (2) Agendas for special meetings will be available immediately upon their preparation at the Police Department Dispatcher's office, without charge.
- (3) Persons paying an annual fee of \$10.00 to the Zoning Administrator, and providing said Zoning Administrator with self-addressed business-size envelopes (approximately 9" x 4"), with sufficient first class postage affixed thereto, will be mailed all Board agendas upon their preparation, for so long as the Zoning Administrator has a supply of the required envelopes. It shall be the sole obligation of the person requesting such mailings, to determine that the Zoning Administrator has sufficient envelopes to continue mailing agendas for so long as such person desires to receive agendas. The fee required hereunder shall be a calendar year fee and shall be due once each calendar year regardless of the date upon which the request for such mailings is filed.

SECTION 5: This Resolution promulgating the foregoing Rules of Procedure shall be effective immediately.

1139.02 PROCEDURE.

(a) Application. An application for a variance shall be filed with the Zoning Administrator. An application shall be complete prior to being scheduled for an adjudication hearing. An application will be placed on the agenda only if the Zoning Administrator is satisfied that all of the materials required by this chapter are included and are sufficient in their content to satisfy the intent of the application requirements. The Board will not hear any appeal on an application the Board deems incomplete.

(1) Contents of application for variance. Eight complete sets of all information shall be submitted with an application. The Zoning Administrator may modify this requirement based upon the type of materials included. The applicant is encouraged to contact the Zoning Administrator prior to submitting an application to discuss the submission requirement. If any information is submitted in color or on non-standard paper, more copies may be required.

- A. Application Fee.
- B. Description of Use and Site.
- C. The name, mailing address, and telephone number of the applicant and the property owner.
- D. If the applicant is not the owner, a statement from the owner that the applicant is entitled to apply on his or her behalf (Letter of Agency).
- E. A legal description of the site, including all separate lots.
- F. A description of the existing uses of the site.
- G. The zoning district in which the site is located.
- H. A description of the existing and proposed use.
 - 1. A description of operations, including type of goods sold, services performed, and expected number of customers, clientele, delivery, and service vehicles.
 - 2. The hours of operation.
- I. The nature and magnitude of the requested variance.
- J. The Code section from which the variance is requested.
- K. A separate narrative statement that explains how the proposed variance satisfies each of the Decision Standards required to grant a variance.
- L. A list of the names and mailing addresses of all landowners within 200 feet of the perimeter of the site.

(2) Site Plan. A scaled site plan shall include the following information in detail. The required information may be submitted on multiple site plans if inclusion of all information on a single plan makes it illegible or difficult to understand.

- A. North arrow.
- B. Scale.
- C. Vicinity map.
- D. All existing and proposed lot lines within the site.
- E. Dimensions of all lots and of the entire site and any adjacent rights-of-way.
- F. Location, height, and use of all proposed and existing structures.
- G. Location and design of all proposed vehicle management areas.
- H. Location, size, and type of all proposed signs.
- I. Location, height, and type of all proposed screening and landscaping.
- J. Distances to residential zoning districts if within 1,000 feet.
- K. The use of land and location of structures on adjacent property and across adjacent rights-of-way.
- L. An indication of the regulation from which the variance is requested.
- M. Other information as required by the Board of Zoning Appeals.

(3) Elevations. Elevations of proposed structures, or typical elevations if structures are not yet designed, may be required by the Zoning Administrator if the proposed location, height, or bulk of the structure is such that it may negatively affect an adjacent use.

(4) Other. Photographs of the existing use and its surroundings and other information regarding the proposed use, site, or surrounding area as may be pertinent to the application or required by the Board of Zoning Appeals.

(b) Reapplication.

(1) No application for a variance that is substantially similar to an application that has been denied or granted, wholly or in part, or revoked, shall be submitted for one year to the BZA for a decision. The Zoning Administrator shall determine if a similar application differs enough to be considered a different application and not subject to this section. The Zoning Administrator may consider factors such as the nature or size of a proposal, changes in the development or traffic patterns of the area, or newly discovered evidence pertinent to a decision on a previous application.

(2) An applicant may appeal the decision of the Zoning Administrator to the Board of Zoning Appeals as stipulated in this Chapter and Section 1129.09 of the Planning and Zoning Code.

(c) Board of Zoning Appeals Review. The Board of Zoning Appeals shall base its review of a variance application upon the complete application, upon any staff report, and upon any relevant and credible public testimony and evidence presented during the adjudication hearing. If the Board of Zoning Appeals finds that the information provided is insufficient to make a determination, it may suspend its review until sufficient information has been provided.

(1) Burden of proof. The applicant shall be required to present by preponderance of reliable, probative and substantial testimony ~~and~~ evidence that supports the applicants request for a variance.

(2) Decision standards. The Board of Zoning Appeals will consider the effect of the request on the public health, safety and welfare. Variances shall be granted only upon a determination that practical difficulties exist with respect to the property in question that would render strict application of the Planning and Zoning Code ~~unreasonable~~ **inequitable and prevent substantial injustice**. This determination shall be made without regard to the existence of variances and nonconformities on other land, sites, or structures not presently under consideration, **unless evidence is introduced into the record for the purpose of showing a variance was previously granted or denied on a similarly situated property**. In determining whether practical difficulties exist sufficient to warrant a variance, the Board shall consider and weigh the following factors:

A. Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;

B. Whether the variance is substantial;

C. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

D. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage);

E. Whether the property owner purchased the property with knowledge of the zoning restriction;

F. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;

G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

H. Any other relevant factor.

(d) Action by Board of Zoning Appeals.

(1) The Board of Zoning Appeals shall grant, grant with conditions, or deny a variance application as presented and shall clearly state the findings upon which its decision is based.

(2) The Board of Zoning Appeals shall base its decision only upon the Decision Standards in this Chapter. In its decision, the Board of Zoning Appeals may waive or modify dimensional regulations of the Zoning Code, or impose more strict regulations and any additional conditions, guarantees, and safeguards it deems necessary to satisfy the purposes of this Zoning Code.

(e) Issuance of Permits.

(1) The Zoning Administrator shall issue permits to permit the action for which a variance was sought after the Board of Zoning Appeals grants a variance. Construction permits shall not be issued unless the plans substantially conform to those upon which a variance was granted. Any action that exceeds a granted variance shall constitute a violation of the Zoning Code.

(2) No order of the Board permitting erection or alteration of a building or the use of a building or premises shall be valid for a period longer than one (1) year, and upon the expiration of such period shall automatically be deemed revoked, unless a building permit for such erection or alterations is obtained and the work is started within such period, or, where no erection or alteration is necessary, the permitted use is established within such period, or an extension is requested in writing and granted by the Board.

(f) Appeal of Board of Zoning Appeals Decision.

(1) Appeals to the decision of the Board of Zoning Appeals shall be made to the Court of Common Pleas of Butler County.

(Ord. 3749. Passed 11-21-23.)