

**POLICIES AND RULES OF PROCEDURE  
BOARD OF ZONING APPEALS  
CITY OF NELSONVILLE, ATHENS COUNTY, OHIO**

**ARTICLE I  
OFFICERS**

1. The Board of Zoning Appeals (“the Board”) shall hold an organizational meeting annually during the month of January or at such time as all members may be seated in order to elect a Chairperson (“the Chair”) and Secretary, form committees, or organize other matters pertaining to the operation of the Board.
2. The Chair shall preside at all meetings and hearings of the Board. In the event of the absence or disability of the Chair or if the Chair recuses themselves for conflict of interest, the Board shall select one of its members in attendance to preside temporarily.
3. The Chair, subject to these rules, shall conduct all hearings and decide all points of order or procedure unless otherwise directed by a majority of the members of the Board in session at the time of the hearing.
4. The Chair, having been elected by the Board, shall appoint any committees that may be found necessary to efficiently conduct the official business of the Board.
5. The Chair and/or Zoning Officer shall report at each meeting on all official business that may not otherwise come to the attention of the Board.
6. The Board elected Secretary or his/her designee, with the support of the Zoning Officer, Director of Code Enforcement and the Office of the City Manager, shall conduct all official correspondence subject to these rules and the direction of the Board; shall cause to disseminate all notices required by these rules and the order of the Board; attend all meetings and hearings; keep minutes of the Board’s proceedings; compile the required records; maintain the necessary files and indexes; and generally be responsible for all the clerical and technical work of the Board.

**ARTICLE II  
JURISDICTION OF THE BOARD**

1. The Board obtains its jurisdiction, power and limit of authority from the Council of the City of Nelsonville, Athens County, Ohio under *Nelsonville City Charter §7.02, Ordinance 44-98 (“the Zoning Code”)* of the City of Nelsonville, Athens County, Ohio and any amendments thereto which became originally effective December 28, 1998; *Ordinance 59-06 (“the Sign Regulations”)* of the City of

Nelsonville, Athens County, Ohio and any amendments thereto which became originally effective on February 8, 2007; and *Ordinance 21-85* (“*the Flood Damage Reduction Code*”) of the City of Nelsonville, Athens County, Ohio and any amendments thereto which became originally effective on January 6, 1986 and substantially amended on December 18, 2009.

2. The Board will hear cases as provided in applicable codes which include appeals;
  - (a) alleging error in an administrative order or decision
  - (b) alleging error in interpretation of application information
  - (c) requesting variance from the *Flood Damage Reduction Code*
  - (d) requesting variance from the *Zoning Code*
  - (e) requesting variance from the *Sign Regulations* and applications for;
  - (f) conditional or special use permits
  - (g) change to non-conforming uses or buildings
  - (h) bed and breakfast establishments
  - (i) home occupations
  - (j) extension of permits for temporary buildings

### **ARTICLE III**

#### **PROCEDURES FOR SUBMITTING APPEALS AND APPLICATIONS**

1. Every appeal or application shall be made in accordance with and on forms provided by the Office of the City Manager and available at his/her office. All appeals and applications shall be made in writing. Applications shall include written arguments in support of the variance, conditional use, special use, or request for interpretation, signed by the appellant or applicant and owner. The statement of argument should include special consideration of the following items:
  - (a) Arguments of the appellant and owner in support of an appeal for variance. Arguments should pertain to the peculiar or exceptional conditions of the site, rather than special problems or desires of the appellant or owner, and should clearly demonstrate practical difficulty or unnecessary hardship. Findings for variance from the *Zoning Code* are contained in §27.08.02.04 and findings for variance from the *Flood Damage Reduction Code* are found in §25.05.06 and §25.05.08.
  - (b) Arguments of the applicant and owner in support of conditional or special use permits should demonstrate that the use will be of such location, size and character that generally speaking it will be in harmony with the appropriate and orderly development of the zone in which the use is situated and will not be detrimental to the orderly development or maintenance of adjacent properties. Findings for conditional use are contained in §27.08.02.05.

- (c) Applications proposing construction shall include plans, drawn to scale, showing the actual shape and dimensions of the lot; the buildings and accessory buildings currently existing; the lines within which a proposed building shall be erected or altered; the existing and intended use of each building or part of the building; the number of families or housekeeping units the building is designed to accommodate; and the location and distance from lot lines and buildings on neighboring lots, as may be necessary to determine and provide for a proper hearing.
  - (d) Each appeal or application shall be accompanied by a required payment in the amount of fifty dollars (\$50.00) or other amount prescribed by separate Council ordinance for the purpose of defraying the expense of legal publishing, serving notices, and necessary clerical and stenographic services.
2. The appellant, applicant, and owner shall provide the Zoning Officer with such additional information and data as may be required to advise the Board fully with reference to the case, whether such information or data is called for or not in the official forms. Any failure or refusal on the part of the applicant, appellant or owner to furnish such additional information or data shall be grounds for dismissal of the appeal or application to the Board.
  3. Every appeal or application shall be filed within thirty (30) days from the date of any refusal or referral of a permit application by the Zoning Officer, or the date of any order, ruling, decision or determination of such Zoning Officer from which an appeal was made.
  4. No appeal or application hearing for a property requested by a non-owner, resident by tenancy, or future owner contingent upon favorable Board review, shall proceed without the attendance of the current property owner so that any questions or conditions may be discussed, confirmed, and agreed to by the owner.
  5. No appeal or application shall be entertained where a case has been decided previously, involving the same premises and code requirements, except in cases where new plans or new facts pertaining to said requirements are presented, showing changed conditions or circumstances which, in the opinion of the Board, materially alter the aspects of the case.
  6. Any verbal or written communication purporting to be an appeal or application shall be regarded as mere notice of intent to seek relief until such time as the required application form with arguments in support is submitted and the application fee paid. Only after an applicant or appellant has fulfilled all application requirements shall the case be determined to be officially filed at which time the public notice and notice to owners of proprietary interest shall be published.

**ARTICLE IV**  
**MEETINGS OF THE BOARD**

1. Meetings of the Board may be called by the Chair or at the request of two (2) members, provided notice of same shall be given to each member and publicly advertised at least twenty-four (24) hours before the time set, except that the announcement of a special meeting at any meeting at which all the members are present shall be sufficient notice of such special meeting. Meetings where an appeal or application shall be considered must be advertised in accordance with §27.08.02.14 giving ten (10) day prior notice by publication in a newspaper of general circulation and notice to parties of proprietary interest. Except in cases determined by the Chair to be of such exceptional or extraordinary circumstance so as to warrant the calling of a special hearing date, including but not limited to threat to public health, safety or general welfare of the citizens of the City, all meetings of the Board shall be held on the first Thursday of each month. A special call meeting to consider an appeal or application shall not be called simply to accommodate the schedule of an individual or for any circumstance created by an act or pending act of an applicant, appellant or owner.
2. A quorum of the Board shall consist of three (3) members and the concurring vote of three (3) members shall be necessary in order to act on an appeal, application, or interpretation of the code. A quorum may also be established by seating of an alternate member acting in the absence of a regular member.
3. When fewer than five (5) members of the Board are present, the appellant or applicant shall be given the opportunity to have the case continued to a meeting when five (5) members are in attendance or they may elect to proceed to have their case heard by the members present. A decision of four (4) or fewer members shall still require the concurring vote of three (3) members for approval.

**ARTICLE V**  
**THE AGENDA, NOTICE OF HEARING**

1. A meeting will be called by the Chair no later than thirty (30) days after receiving a perfected appeal or application with required data. Cases shall be numbered serially, beginning with unity at the start of each calendar year, and the case number shall be hyphenated with the number of the year in which the appeal or application is filed. The following letters shall be suffixed to the case numbers;

E--alleging enforcement error

I--alleging misinterpretation

V--requesting variance from the *Zoning Code*

S--requesting variance from the *Sign Regulations*

F--requesting variance from the *Flood Damage Reduction Code*

T--requesting to extend a temporary building permit

C--requesting conditional or special use

N--requesting change or substitution of non-conforming use or building

2. Appeals or applications will be assigned for hearing in the order in which they are received, except that they may be advanced or postponed for hearing by order of the Board, upon good cause being shown by the appellant or applicant. No more than four (4) appeals or applications will normally be scheduled for any meeting of the Board. Exceptions will be determined by the Chair. Where all appeals or applications cannot be disposed of on the day set, the Board may recess from day to day, or to any future day as it may order. When a recess is taken, the recessed meeting shall be construed as continuance of the regular meeting, and no further notice need be given.
3. Following the filing of a perfected appeal or application together with the required fee, and at least ten (10) days before the scheduled hearing, the Zoning Officer shall cause a notice of such hearing to be published and served personally or by mail in accordance with the provisions of the *Zoning Code* or the *Flood Damage Reduction Code*.
4. The term “parties having proprietary interest” as referred to in §27.08.02.14 of the *Zoning Code* and §25.05.04 (B) of the *Flood Damage Reduction Code* shall include the applicant, appellant, and owner and all owners of record of the real property within two hundred (200) feet of any property in question.

## **ARTICLE VI**

### **ORDER OF BUSINESS**

The order of business at meetings shall be determined by the Chair, normally including:

- (1) Roll call and acknowledgement of other officials present
- (2) An explanation of procedure upon which the Board operates
- (3) Swearing-in of witnesses
- (4) Hearing of appeals and applications
- (5) Review of minutes of previous meeting
- (6) Miscellaneous business and communications

## **ARTICLE VII**

### **HEARING OF CASES**

1. At the time of the public hearing, the appellant or applicant and owner shall appear on their own behalf or may be represented by counsel or agent. In the event of absence of the appellant, applicant, or owner the statements of the opposition (if any) may be heard and the transcript thereof presented at the subsequent hearing.

2. The procedure of the hearing of cases shall be as follows:
  - (a) The Chair shall name and describe each case on the agenda.
  - (b) The Chair shall call upon the Zoning Officer to state the basis of the refusal or section requiring Board review and present applicable or pertinent facts or conditions relating to the property in question.
  - (c) The Chair then shall call upon the appellant or applicant and owner to give reason why his appeal or application shall be granted. Board members and the Zoning Officer may ask questions as necessary to obtain complete information regarding the case but questions from those other than the Board or the Zoning Officer shall not be addressed directly to the appellant, applicant or owner but rather to the Board.
  - (d) The Chair then shall ask if there are interested persons present who wish to be heard: first, those in favor; second, those who may be opposed; and third, those in general comment. The name and address of each person who appears before the Board shall be recorded in the minutes of the meeting so that a record of standing may be established in the event that the resolution of the Board be appealed to the Court of Common Pleas.
  - (e) The Chair shall then ask the appellant or applicant whether they wish to be heard in rebuttal.
  - (f) All persons wishing to present testimony before the Board shall be limited each time they speak to five (5) minutes unless additional time is granted by the Chair. Any person giving testimony or presenting facts or evidence already presented to the Board by a previous speaker shall be asked to provide only new information. Lacking presentation of any new information, facts or conditions, the speaker shall be asked by the Chair to withdraw.
  - (g) The Chair shall then close discussion from the floor. The Board shall take the case under advisement and the Chair shall call for a motion in the affirmative that a resolution be adopted granting the appeal or application, and specifying any conditions under which it will be granted. The Board shall then review any necessary findings as required by the applicable code, and vote by roll call shall be taken. If the Board decides that it is not yet in a position to take action, it may agree to inspect the premises in question, or request further information from the appellant, applicant, or owner, and may set a time for a recessed hearing or action on the case. The failure to obtain three (3) concurring votes in support of a resolution for an appeal or application shall be considered a refusal.
  - (h) All other cases on the agenda shall be heard in like manner.

**ARTICLE VIII**  
**FINAL DISPOSITION OF CASES**

1. All final actions of the Board pertaining to appeals from the provisions of a code shall be by resolution, in accordance with the provisions of each applicable code. Such Board resolution shall contain the following:

- (a) Name and address of person and owner making the appeal.
  - (b) Description of premises involved in the appeal by street address, or by block and lot, or by other legal description; also the zoning or special use district in which the premises are located.
  - (d) Provisions from which appeal or application is made.
  - (e) Physical conditions of the premises, or other premises affected, and of the building or use proposed by the appellant which are pertinent to a decision.
  - (f) Opinion of the Board as to the degree of practical difficulty shall comply with §27.08.02.04 of the *Zoning Code* and §25.05.04 of the *Flood Damage Reduction Code*.
  - (g) Statement of resolution that the appeal be granted or denied and date the action is entered.
2. All final actions of the Board pertaining to conditional use permits or authorizations of special exceptions shall also be by Board resolution. Such resolution shall contain the following:
  - (a) Name and address of person and owner making the application.
  - (b) Description of the premises involved in the application by street address, or by block and lot, or other legal description.
  - (c) *Zoning Code* provision under which application is made.
  - (d) Physical condition of the premises, of other premises affected and of the building or use proposed by the applicant which are pertinent to the decision.
  - (e) Opinion of the Board as to the desirability or undesirability of the proposed building or use as regards adjoining premises and the general intent of the *Zoning Code* and must comply with §27.08.02.05 of the *Zoning Code*.
  - (f) Statement of resolution that the application be granted or denied; date the action is entered.
3. Interpretations of textual provisions of the *Zoning Code* and of the location of district boundaries shown on the *Zoning Map* shall also be by Board resolution and the Zoning Officer shall establish a reference file thereof.
4. An appellant or applicant may, by written statement, withdraw their appeal or application at any time prior to decision by the Board. If the withdrawal is made after the Board receives testimony, the request will be with prejudice and will not be reconsidered for the same case in a subsequent twelve (12) month period.
5. Unless an appeal or application is perfected within thirty (30) days of the date of filing same, the Board may, by a concurring vote of three (3) members, dismiss said appeal for want of prosecution.

6. A decision of the Board shall not become effective until the expiration of five (5) working days from the date of such decision and upon signature of the Chair upon the resolution of the Board or a time otherwise specified by the Board.
7. In addition to remedies provided by *Ohio Revised Code Chapters 2505 and 2506*, a final decision of the Board may first be appealed to Nelsonville City Council. The appeal shall be in writing and filed within thirty (30) working days of the signed resolution of the Board.

## **ARTICLE IX**

### **RECORDS**

1. The Secretary shall keep minutes of meetings, which shall include the names of Board members in attendance; the name of the appellant, applicant, and owner and of other persons appearing before the Board, the case number and description of premises involved, a description of the appeal or applications, names of members making and supporting all motions, and the vote of all members thereon.
2. The Zoning Officer shall keep a file for each case, which shall include all forms submitted or mailed as listed in *Articles III and V*, correspondence and diagrams pertaining to the case, copy of notice, and the original resolution.
3. The Zoning Officer shall keep a cross-reference file of all cases listed by street address, which shall include case number, statement of request made by appellant or applicant, and action and date of action taken by the Board.
4. An audio recording shall be made of all hearings and kept for a period of at least one (1) year following the recording date. After that time, the recording may be erased or destroyed in accordance with Nelsonville City records retention schedules, but not before the minutes of any proceedings thereon have been adopted by the Board.
5. Such records shall be kept in the office of the Zoning Officer and shall be accessible to the public at all reasonable hours.

## **ARTICLE X**

### **GENERAL ACTIONS OF THE BOARD**

Every action of the Board not otherwise provided for shall require three (3) affirmative votes of the members.



**ARTICLE XI**  
**AMENDMENT**

These rules and regulations may be amended or modified provided that such amendment is presented in writing at a regular meeting and action taken thereon at a subsequent regular meeting.

**ARTICLE XII**  
**ADOPTION OF RULES AND REGULATIONS**

These policies and rules of procedure for the Nelsonville Board of Zoning Appeals are hereby adopted this 2<sup>nd</sup> day of February, 2012 by affirmative vote of the following members:

Dee Dee Logg  
Signature

Dee Dee Logg  
Printed Name

Janie Fraedrick  
Signature

Janie Fraedrick  
Printed Name

Jan Weller  
Signature

JAN Weller  
Printed Name

John Hartley  
Signature

JOHN W HARTLEY  
Printed Name

Daniel McDonald  
Signature

DANIEL McDONALD  
Printed Name

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Signature

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Printed Name