



**Powell**  
— OHIO —

**THE CITY OF POWELL**  
**RULES OF THE**  
**BOARD OF ZONING APPEALS**

Approved May 4, 2023

## CITY OF POWELL

### RULES OF THE BOARD OF ZONING APPEALS

#### A. ESTABLISHMENT

The Board of Zoning Appeals shall be created in accordance with the City of Powell Charter [Section 11.02](#) (or as otherwise amended).

#### B. BOARD STRUCTURE

As established in the City of Powell Charter [Section 11.02](#), there is hereby created a Board of Zoning Appeals that shall consist of five (5) members nominated by a City Council person and confirmed by a majority vote of all members of Council. No elected official, no City employee, and no member of the Planning and Zoning Commission shall serve on this board.

Each member will serve a four (4) year term. Terms shall commence on January 1 and be staggered as established by Council by ordinance. A vacancy occurring during the term of any member shall be filled for the unexpired term by a member nominated by a City Council person and confirmed by a majority vote of all members of Council. A member may serve more than one term.

Three (3) members shall be required to constitute a quorum and an affirmative vote of a majority of all members shall be needed for any official action. At the first meeting of the year, the Board shall choose from its members a Chairperson and such other officers as it deems necessary. Members of the Board shall serve without compensation unless otherwise provided by ordinance.

Unless otherwise provided by Council, this Board shall have all power and authority conferred upon such boards by the laws of the State of Ohio and shall conduct its affairs in the manner provided by such state law.

As established in the City of Powell Charter [Section 11.05](#) the Council may at any time remove any member of any board or commission created by this Charter with or without cause for any reason determined by the Council in its sole discretion. The removal shall not become effective without the concurrence of two-thirds of all members of Council

### **C. MEMBER DUTIES**

At the first meeting of the year, the Board shall elect a Chair and any other officers deemed necessary (i.e. Vice Chair). Elected officers shall be entitled to vote and shall each hold office for one (1) year or until a successor is elected. Should the Chair be absent for a meeting, the Vice Chair shall preside over the meeting. Should both the Chair and Vice Chair be absent, the most senior member of the Board shall preside.

Attendance is a responsibility of each member of the Board. Regular attendance is encouraged for all members. Each member shall be responsible for notifying the Chair and the Director or designee as soon as possible before any Board meeting if unable to attend.

The responsibility of the Chair is, primarily, to ensure the integrity of the Board process in accordance with Zoning Code Section [1133.12](#) which lists the following duties:

- (a) Hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation or determination made by the Zoning Administrator.
- (b) Authorize such variances from the terms of this Zoning Ordinance as will not be contrary to the public interest, where, owing to the special conditions, a literal enforcement of this Zoning Ordinance will result in unnecessary hardship, and so that the spirit of this Zoning Ordinance shall be observed and substantial justice done. Such variances shall only be awarded in strict compliance with the conditions of [Chapter 1127](#).
- (c) Grant conditional use zoning permits as specified in this Zoning Ordinance.

### **D. MEETINGS AND PROCEEDINGS OF THE BOARD OF ZONING APPEALS**

As established in Zoning Code Section [1133.07](#), the Board shall meet at least once a month unless there are no submitted applications for that month. All meetings shall be held at the municipality offices or other public building within the municipality. All meetings shall be open to the public. 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, the facts of each case, other official actions and other minutes of the meeting, all of which shall be a public record and shall be immediately filed with the Clerk of the Board, a copy of which shall be sent to the Clerk of the Council. The concurring vote of three members of said Board shall be necessary for the approval of a Board action or to reverse a previous decision or determination of the Board of Zoning Appeals.

#### **APPLICATIONS**

- (a) Applications shall be submitted to the Zoning Administrator or designee in accordance with the Zoning Code and the administrative provisions of the Planning and Zoning Division.
- (b) Staff shall prepare and distribute an agenda to the Board and to all applicants prior to the meeting listing all applications pending for the meeting and ensure proper

- public notice is distributed in accordance with Code.
- (c) Applications previously tabled may be scheduled first. The Chair of the Board may alter the agenda order at the meeting.

#### ATTENDANCE OF APPLICANT

While the attendance of an applicant or representative at all meetings at which the case is under consideration is discretionary. The Board strongly encourages attendance to aid in dialogue and answering questions. The Board may table, with or without a hearing, an application if the applicant or applicant's representative is not present when the matter is called at the meeting. Applicants or their representative are expected to present to the Board, unless otherwise deemed unnecessary by staff, the Board or the applicant or representative.

#### TABLING AND WITHDRAWAL

Requests to table or withdraw a case, including the reason for the request, shall be made in writing by the applicant to the Zoning Administrator or designee prior to the meeting or verbally by the applicant or his/her representative at the meeting. Requests shall require approval by a majority of the Board members in attendance. A tabled case may be rescheduled for the next available meeting, or at such other time as specified by the Board, or the next available meeting after the reason for the tabling has been resolved, as determined by the Zoning Administrator or designee.

#### MEETING CONDUCT

- 1) The Chair will call the Powell Board of Zoning Appeals hearing to order.
- 2) Roll Call by the City Clerk or other appointee.
- 3) First order of business is to approve minutes of the last hearing.
- 4) The Chair will read the item from the agenda. (Cases will be heard in order unless the Chair identifies a need to reorder agenda items)
- 5) Staff will summarize the proposal and request for the Board. The applicant is encouraged to present the proposal to the Board and be available for any questions of clarifications. The chairperson will swear-in all persons who will testify for each application at the appropriate time.
- 6) The applicant/appellant and/or their representative will make a detailed presentation of their request, including the right of the applicant to inquire of the applicant's witnesses, all testimony will be under oath. The Board may inquire of each witness presented by the applicant when the applicant has concluded with such witness.
- 7) At the conclusion of the applicant's case, any other parties that have anything new to add in the matter, either in favor of or against the proposal may present their testimony, after being sworn in. At the conclusion of such testimony, the applicant may inquire of each witness. At the conclusion of the applicant's inquiry, the board may inquire of such that have witness. At the conclusion of the board's inquiry, the applicant may further inquire of the witness based upon matters raised by the board. Give people all the time they wish to talk unless you have an obvious filibuster situation. (Keep in mind "due process" at all times.)
- 8) The hearing will be open to public comment. The Chair will recognize citizens wishing to speak on an item on the agenda. *Citizens wishing to be heard on items not included on the formal agenda will be recognized under the agenda*

*heading "Hearing of Visitors for Items not on the agenda.* "Each person addressing the Board is asked to state his/her name and address. All questions or comments shall be directed to the Chair. The Chair may elect, in sole their discretion and at the request of other Board members to enforce a maximum testimony length of three (3) minutes. After three (3) minutes, the Clerk will signal the Chair who will ask the individual to "please summarize comments" as they are past the allotted time.

- 9) The public hearing will be closed. Once the public comment session is closed, no further comments from the audience will be entertained, unless specifically permitted by the Chair. Board members may request clarification of a public comment from a member of the audience during the Board discussion session.
- 10) All Board members will act in accordance with the following during Board meetings:
  - Respect to all throughout any hearing.
  - Respect for the time citizens have taken out of their day to attend a meeting and the corresponding effort to hear matters in a timely manner.
  - Debate that is civil, courteous, and respectful, regardless of differing viewpoints.
  - Members should give each matter its due attention. Meaning, they should make every effort to appear on time for meetings and give their attention to the issue being heard. Board members shall not engage in lengthy discussion amongst themselves during public comments.
- 11) Participation in Board discussion during meetings shall be limited to Board members until specific participation is directly requested by Board members and acknowledged by the presiding officer.
- 12) The Board of Zoning Appeals will begin debate on the item. Once Board debate begins on an item, no further comments from the audience will be entertained. If an amendment or other motion is made which substantially changes the main motion, the chair shall recognize persons in the audience wishing to speak to that amendment.
- 13) The applicant/appellant may present rebuttal evidence (in accordance with procedure in #8).
- 14) The BZA will finish deliberations and render a motion, after which a vote will be recorded by the City Clerk or other City Official.
- 15) Receive motion and second to adjourn.

**E. MISCELLANEOUS**

CONFLICT OF INTEREST 2.03

Unless otherwise provided by this Charter, the laws of the State of Ohio pertaining to ethics and unlawful interests in a public contract shall apply to all elected and appointed officials and employees of the City, and to the appointees to the City's boards and commissions. In order to address any potential ethics or contract issue in the manner provided by law, such officials, employees and appointees shall disclose to the Law Director the potential issue and shall refrain from any deliberations, votes or any other participation in said matter prohibited by Ohio ethics law.

Once it is determined that a conflict of interest exists, the following procedure shall be used:

- (a) After being recognized by the Chairperson, the member will note he/she will not be participating or voting on the application due to a conflict of interest. The member may state his/her reason why a conflict of interest exists.
- (b) The member shall then be excused by the Chairperson and leave the room. Once the matter is concluded, the member may rejoin the meeting.

EX-PARTE CONTACT

Any Board member should avoid ex-parte contact with any applicant or their representative(s) on an application on-file with the City. If any contact is made by an applicant, the member should refer the applicant to Staff. Any Board member should disclose any substantive discussions with resident(s) and/or the general public regarding a pending application at the next public meeting. This should include all relevant information provided by the resident(s) and/or general public in order to ensure that all Board members are considering the same information, prior to rendering a decision.

GENERAL CONDUCT

Board members are expected to devote their full attention to the discussion of Board business during meetings. Any communications, whether virtual, telephone, electronic mail, or other means, to individuals outside the public deliberations of the Board are highly discouraged and should only occur under emergency circumstances.

Robert's Rules of Order are to be used as a guide in the governance of this Board and for all cases not otherwise provided for in these rules. Technical violations of these rules or parliamentary procedure provisions shall not invalidate Board actions.

These rules are to be included with the sign in sheet to aid all those in attendance that wish to participate.