



**BOARD OF ZONING APPEALS  
MEETING MINUTES  
JUNE 2, 2022**

**CALL TO ORDER/ROLL CALL**

Chairman Jim Hrivnak called the Board of Zoning Appeals meeting to order at 6:30 p.m. Board members present included: Jim Hrivnak, Randy Duncan, Janice Hitzeman, and Ryan Brickner. Board member Gregory Short was absent. Staff present included: Claudia Husak, Planning Director; Elise Schellin, Development Planner; Peyton Kaman, Development Technician, and Jesse Shamp, Legal Counsel.

**APPROVAL OF MEETING MINUTES**

May, 5 2022 Meeting Minutes

MOTION: Randy Duncan moved to approve the Board of Zoning Appeals meeting minutes of May 5, 2022. Janice Hitzeman seconded the motion. Minutes approved.

VOTE:            Y – 4            N – 0

**HEARING OF VISITORS FOR ITEMS NOT ON AGENDA**

Chairman Hrivnak opened the floor for visitors to address the Board with issues not on the Agenda this evening. Hearing none, Chairman Hrivnak closed this portion of the meeting.

**NEW CASES**

**Case 2022-13ADM**

[Charter of Powell BZA.pdf](#)

[BZA Comp Review.pdf](#)

[Small Cell Ordinance.pdf](#)

Chairman Hrivnak stated the Board would be looking at the Charter Provisions as it relates to the Board of Zoning Appeals, a comprehensive review of the BZA in the Zoning Code and Small Cell Ordinance.

Ms. Husak informed the Board that City Council just approved a Small Cell Ordinance. Staff worked with the Law Director's office to include a process for review and issuance of permits for the Small Cell communication towers within City's right-of-way. The ordinance was accompanied by a Right-of Way Ordinance, which the City has not had before, any kind of work utilities do in the right-of way currently requires a \$40 zoning permit but does not allow the City much oversight.

The Right-of-Way Ordinance will be in affect beginning January 1, 2023 and there are some notification requirements for public utilities. Staff is also working on the internal approval process. Staff has been working with Verizon prior to the adoption of this ordinance and have done site visits to determine appropriate locations. Staff has been informed underground work will be starting in the next week at Bennett Parkway and the entrance to Olentangy Ridge.

Ms. Husak said in the Zoning Code there is a telecommunications chapter, which deals with larger wireless structures that includes review by the Board of Zoning Appeals for some of those. They have consolidated the Small Cell & Telecommunications in a new chapter of the Code and placed it under utilities. They are not purposing any changes to the BZA oversight but wanted the Board to be aware of the consolidation.

Chairman Hrivnak stated he does not have any questions regarding the consolidation but asked about the part that the Board would play in review and approval.

Ms. Husak responded it would be approval of conditional uses for larger stealth structures in certain districts, which there are none currently purposed. There was one pending, which was discussed at City Council and there was no interest in using City parkland for this structure.

Ms. Husak talked about the City Charter as it relates to the Board of Zoning Appeals and said nothing in this section is proposed to change because a Charter Amendment would require a vote from the public. She wanted to include it because in the Zoning Code portion of the Board of Zoning Appeals there are some discrepancies with membership and quorum, so she would like to align them with the Charter.

Board Member Brickner agreed that it states 2 members would be a quorum, which needs changed to 3 members.

Ms. Husak said from a Staff perspective it might be a good idea to change the order of how it flows because it starts abruptly in the beginning without giving background. She also discussed the Zoning Code section related to drainage requirements. This section refers enforcement to the City Engineer and/or the Public Service Director, however in the very last paragraph an appeals process is built in.

Chairman Hrivnak said the 30-day time limit, should also be highlighted.

Ms. Husak talked about posting of notice signs, which the Zoning Code puts on Zoning Administrator to design. She suggested this is changed to as provided by the City.

Chairman Hrivnak asked if the City gives them the sign and Ms. Husak stated no, the City gives them the graphic and they print the sign. It is something that could be adopted into the Rules and Regulations of the Board of Zoning Appeals instead of having it in the Zoning Code. It is a practice that does indeed work.

Chairman Hrivnak stated it would be more appropriate to have it in the notification section and Board Member Hitzeman suggested stating approved by the Zoning Administrator instead of designed by the Zoning Administrator.



Ms. Husak talked about the appeals section regarding clarification on the 20-day notice since sometimes the Board does not have consecutive meetings. She is asking if the opinion of the Board is that the 20-days to appeal starts after the meeting or once the Finding of Fact is mailed to the applicant and Chairman Hrivnak said he reads it as you have 20 days to file an appeal once a decision has been made.

Jesse Shamp, Legal Counsel, stated he thinks it is the appeal to the Board of Zoning Appeals based on the decision of the Zoning Administrator and means that the appeal has to be filed within 20 days after the decision. He feels the decision language is ambiguous and can be clarified if we want it to be 20 days from the date of the notice.

Chairman Hrivnak said if we do not hear from them in 20 days then consider it a final decision and Mr. Shamp said the best way is 20 days after notice.

Board Member Brickner asked if there is a form that someone can fill out to appeal a decision. Ms. Schellin stated there is an appeal application and Ms. Husak stated the decision would be in writing or a permit with a denial on it.

Mr. Shamp feels that stating "any person aggrieved" is a pretty broad statement. He feels something should be added here for a good definition of standing. Board Member Brickner suggested referencing the appeal application as well.

Board Member Hitzeman asked for confirmation on how notice of the decision is provided to the applicant. Ms. Husak stated it is mostly email and most of the time the applicant is a contractor. The application gets sent back to the contractor who then has to notify the property owner. She stated Staff rarely denies an application and typically they try to work with the applicant before they would send out a stamped denied application.

Ms. Husak asked Jesse Shamp to talk about the *Stay of Proceedings* since it is somewhat confusing. Mr. Shamp agreed it is confusing but feels it generally means if the Zoning Administrator denies or approves something and an aggrieved party files an appeal, then the intent of this section would have everyone stop doing what they are doing and only allows action to continue if the Zoning Administrator says this is a danger to life or property. He is recommending the paragraph be simplified moving forward.

Chairman Hrivnak asked if there is a provision for someone to appeal the granting of a permit. Mr. Shamp said in Grove City they have a procedure that states there is a 21-day waiting period in you are granted your permit to allow any party that disagrees to file an appeal to City Council. He does not know if the City of Powell has that terminology. Ms. Husak discussed a situation where an HOA does not allow something the City Code does. They could potentially file an appeal and say Staff should have include the HOA rules in their review of a permit and then the BZA would have to decide.

Board Member Brickner added he thinks the 20-days should be clarified if its business days or switch it to 21 days. Ms. Husak said she believes the code states days, not business days, which is throughout the Code. It would be difficult to change it to business days, but you could increase the number of days.

Ms. Husak suggested a change to the wording in section 1127.05 Variances, where it says "may authorize upon appeal in specific cases such variance", her recommendation is to not use the word appeal because there is an appeals process. Also, it does have some review criteria but not all of them and is confusing as well. Chairman Hrivnak agreed he could see it being confusing.

Board Member Hitzeman is concerned about the last provision, which is the Board has to find that it would result in deprivation of all beneficial use. Ms. Husak said she thinks that speaks to a use variance and does not see a difference where it speaks to use variance vs. area variance. Use variances are very hard to prove but she did not think you can eliminate them. Mr. Shamp agreed and Chairman Hrivnak said maybe this section would be better to describe what a variance is and how you obtain one. Mr. Shamp stated all it needs to say is the Board of Zoning Appeals may authorize variances in specific cases when criteria in 1127.06 are met and Board Member Hitzeman suggested saying factors for consideration set forth in section 1127.06. Ms. Husak said she would like to add to an application as provided by the City of Powell and other materials as deemed appropriate by the Zoning Administrator.

Ms. Husak asked counsel if all the standards have to be met and Chairman Hrivnak added do they have to be in the affirmative. Mr. Shamp said all municipalities struggle with this because 1 through 7 are word for word from the Seminole variance case from the Ohio Supreme Court. Every Court of Appeals in the state, no matter what the decision being appealed is, runs through those factors. He said the courts are unlikely to disturb the decision of a local body if they are reasonably tied to these factors. All 7 factors do not have to be met but is a balance where the majority are met for passage or failure to pass.

Board Member Hitzeman discussed that they are not really yes or no questions, but they don't really need to be except that in section 1127.13 talks about a decision has to be that each of the standards set for the granting in this ordinance have been met. She is suggesting that should be reworded to say considered instead of met. She thinks clarification is needed on whether these are "standards" or "factors". It is either a factor to be considered or a standard you have to meet. Where it says narrative statements and supporting documents, instead of establishing and substantiating that it conforms to each of the following standards maybe addressing each of the following factors to be considered by the Board of Zoning Appeals.

Ms. Husak stated the substantial one is very difficult for the applicants. Chairman Hrivnak asked Mr. Shamp if the Board can discuss the 7 items and come to an agreement on why an item is substantial or not substantial. Mr. Shamp agreed that is good practice and said he would put together a list of cases that were appealed and how the court responded.

Chairman Hrivnak said he felt sometimes there is not enough discussion after the applicant gives there presentation and before the vote. Mr. Shamp said the more discussion about why something is or is not substantial the Board has before the vote the better. Board Member Duncan said sometimes it's a simple decision so there doesn't need to be discussion.

Ms. Husak said the Board could state they have reviewed the Staff Report and agree with their analysis. Board Member Hitzeman, said as an attorney, she agrees the more discussion and deliberation that is given the better.



Ms. Husak talked about the conditions and safeguards and said that she and Mr. Shamp talked about it being an option for the Board to grant a variance with a caveat. Ms. Husak said an example of this is if there criteria or factors that a condition could make better. Mr. Shamp agreed using this if the condition is tied back to one of the 7 factors.

Ms. Husak discussed the 30-day requirement for application submission prior to meeting and how they have tried to align the application date with the meeting dates. Chairman Hrivnak asked about moving that to 35-days or is 30-days the standard. Mr. Shamp said there is no standard and he has seen 35-40-days in some cases. Board Member Brickner suggested 30-days from the public posting of the application. Mr. Shamp said they can take a closer look at this so it doesn't tie the Boards hands on reviewing an application.

Ms. Husak talked about a training session she recently took with a lawyer and planner on the BZA and proceedings. The topic of having a court reporter came up as a good practice. She stated she has not worked at a municipality that required a court reporter during proceedings. She talked about the significant cost of having a reporter and how the fee paid to the court reporter does not include the cost of the transcript. Currently, the BZA minutes are typed by the clerical staff, the meeting is recorded and live streamed during the proceedings. What she has seen in other municipalities is if a transcript is requested, then the recording is sent to a court reporter for transcribing and then the burden of the fees would be paid by the requester. Chairman Hrivnak agrees this could be changed. Board Member Hitzeman asked for Mr. Shamp's opinion since this is the official record for appeal. Mr. Shamp said no one has a court reporter prepared transcript. Once an appeal has been filed they send the audio to a court reporter for transcribing. After more discussion the board members agreed this could be changed.

Chairman Hrivnak asked that the exhibits be labeled. Ms. Husak wondered if that can be in practice or should it be written in the Code. Mr. Shamp said it could be done in practice. Board Member Brickner asked if there is a standard in the Code for when the applicant submits evidence. Mr. Shamp said it would say materials presented as evidence shall be dully recorded and everything they present goes into the minutes and record. He further said he would encourage them that each item should be labeled. Board Member Brickner asked if there is a due date prior to the hearing. Ms. Husak said they would err on the side of admitting it then the Chair would say yes we will admit this as an exhibit.

Ms. Husak suggested not striking the court reporter completely, but updated the section regarding the court reporter fee to say that if an official transcript by a court reporter is requested the requester shall incur the fee.

Ms. Husak stated that 1127.13 is confusing and she has noticed it in the Planning & Zoning Commissions action statement as well. It says within 30 days after the public hearing the Board of Zoning Appeals shall either approve, approve with conditions or disapprove. Chairman Hrivnak said he did not know if all of the Board Members are aware they could delay making a decision. Mr. Shamp said that is true, but you would have to hold another public hearing within the 30 days to approve or disapprove.

Board Member Brickner asked if this should reference back to 1127.06 and Mr. Shamp stated it should read the Chairperson will make the written finding, approved by the Law Director, processed by the Clerk stating the reasons for approval or disapproval as outlined in 1127.06.

Ms. Husak suggested under the conditional use application permit this includes a requirement of 7 copies being submitted and she would like to strike this from the entire Zoning Code mainly because everything is more electronic and the City only needs 2 for the official record.

Ms. Husak said also under the conditional uses she summarized what kind of conditional uses are under the purview of the BZA. She highlighted the 30-days to be changed as well. Ms. Husak brought up the Revocation of Conditional Use Permit in Section 1129.12 to review how that works. Mr. Shamp said the City would notify the Board, the Board would notify the person holding the permit, and they would invoke an option to hold a hearing or not. If they invoke a hearing you would have your standard hearing, if they ignored the notification then the Board could pull the conditional use. He said the City would provide evidence of non-compliance to why they are not in compliance with the permit.

Ms. Husak also talked about adopting rules to include conduct as well as procedures. Chairman Hrivnak brought up that 1133 mimics the Charter and asked if that is incorrect and Mr. Shamp said it is because it is incorrect in more than two places. Ms. Husak brought up 1133.12 could be something that could go in the beginning of the Board of Zoning Appeals chapter.

Ms. Husak also pointed out in 1133.13 it reads that the Board shall appoint a Clerk, which is something that is not practiced. Typically it the Zoning Administrator or designee functions in that role.

Chairman Hrivnak asked about Section 1145.33 regarding screening and Ms. Husak said she thought it was oddly specific as to why it is called out as a variance request. Board Member Hitzeman said maybe historically it was when Sawmill Parkway was going in and abutting Liberty Township.

Ms. Husak said in Section 1147.03 Amusement Arcades section she feels description of the Zoning Administrator should be more general.

The Board had a brief discussion regarding Section 1147.09 under (e) Variance to Distancing Requirement. Ms. Husak suggested changing the word variance for this because the standards are specific and the request is unique. It does not technically deal with variance standards. There was also a discussion about a potential typo with the reference to (c)(5) in that same section.

In closing, Ms. Husak said they listed all the conditional uses under the purview of the Board of Zoning Appeals. Chairman Hrivnak asked from this review how do they move forward. Mr. Shamp stated they will get a redline draft of the changes discussed. Ms. Husak said once the Board of Zoning Appeals has reviewed the changes, the Planning & Zoning Commission would make a recommendation for approval City Council.

## **STAFF COMMUNICATIONS**

Ms. Husak advised the Board that Gregory Short has notified Staff that he intends to resign from the Board of Zoning Appeals and will send a formal notification.

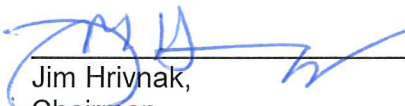


## ADJOURNMENT

MOTION: Chairman Hrivnak moved to adjourn. Board member Brickner seconded the motion.  
Motion passed. Motion passed.

VOTE:           Y – 4           N – 0           AB – 0

Meeting adjourned at 7:55 p.m.

**MINUTES APPROVED: October 6, 2022**

	
_____ Jim Hrivnak, Chairman	_____ Pam Friend, Administrative Assistant
	
Date	Date

