

Amended Ordinance 19 – 22

By: Matt Klingler

An Ordinance to amend 1226.19 Appeals to Council, in order to specify an appeals timeline based upon the date of receipt of a record of decision and posting of decision to website; to provide for City Council’s ability to decline jurisdiction based upon conflicts of interest or for other cause; and to provide for the suspension of active permits pertaining to those parts of an application that are under appeal.

Whereas, In instances where the Board of Zoning and Planning does not meet for two months, or where a monthly meeting is not held because a quorum of the Board is unable to be obtained, or where a majority of the board was not present at the past meeting and is unable to approve minutes, the timeline for appeals can be unreasonably lengthened, resulting in hardship to applicants whose project timing and purchase process often rely on reasonable zoning timelines; and

Whereas, A variety of procedural amendments are necessary to the Council appeals process, based on experience over the past several years, including specifying that an active appeal should result in the withholding of certain permits, and providing for the ability for Council to decline jurisdiction based on a conflict of interest or other cause;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1:

That Section 1226.19 (a) be amended as follows:

1226.19 APPEALS TO COUNCIL.

Every final order, adjudication, or decision of Bexley Board of Zoning and Planning (hereinafter "Board") may be appealed by the applicant or any Bexley property owner that is directly and adversely affected by such decision to Bexley City Council for review and determination as follows:

- (a) A written notice of appeal utilizing the form prescribed by the Mayor of the City of Bexley (the "Notice of Appeal") shall be filed with the Clerk of City Council within thirty (30) calendar days **after a record of decision has been provided to the applicant by mail, e-mail, personal service, or through the city’s zoning application software, and has been posted to the City’s website.** ~~the written decision of the Board is journalized and the minutes of the meeting are approved~~ A Notice of Appeal shall set forth the decision of the Board appealed from and the errors complained of by the appellant. Any claimed errors that are not identified in the Notice of Appeal shall be waived. If the appellant is the applicant, the Clerk of City Council shall serve the Notice of Appeal on the property owners that were entitled to notice of the Board hearing by regular mail upon receipt of

the Notice of Appeal. If the appellant is not the applicant, the Clerk of City Council shall serve the applicant by certified mail **or as provided through the City's zoning application software** upon receipt of the Notice of Appeal, and shall serve the property owners that were entitled to notice of the Board hearing by regular mail upon receipt of the Notice of Appeal.

- (b) The fee for filing a Notice of Appeal shall be Two Hundred Fifty Dollars (\$250.00) which shall be paid at the time of the filing of the Notice of Appeal.
- (c) Upon receipt of the filing of a Notice of Appeal, the Clerk of City Council shall notify the Clerk of the Board from which an appeal has been taken who shall file with the Clerk of Council the record of the proceedings, and all relevant background or other information that was before or taken into consideration by the Board in making the order, adjudication, or decision being appealed within fourteen (14) calendar days of receiving the Notice of Appeal from the Clerk of Council.
- (d) Bexley City Council shall examine the record of decision and hear oral argument by the parties within thirty (30) calendar days of receiving the Notice of Appeal, unless the following apply:
 - a. If Bexley City Council is in summer recess at the time of receiving Notice of Appeal, Council shall hear argument within sixty (60) calendar days of receiving the Notice of Appeal.
 - b. If there is an agreement between the appellant, the appellee, and the City Attorney, an extension may be granted.
 - c. Other good cause as determined by Bexley City Council.
- (e) The Clerk of Council shall give written notice of the oral argument at least fifteen (15) calendar days in advance of the date of the argument to the appellant and appellee by ~~certified mail, e-mail, or personal service,~~ **or through the city's zoning application software** ~~and all persons required to be notified of the hearing on the application before the Board appealed from by regular mail.~~ At least fifteen (15) calendar days before the date of the oral argument the Clerk of Council shall post notice on the City's website. The notice shall state the time and place of the argument and a summary of the appeal.
- (f) The appellant or appellee is permitted, but not required, to file a brief on the merits of the appeal. No reply brief or memorandum contra brief shall be permitted. All briefs must be served and filed no later than seven (7) calendar days before the oral argument except by leave of Council. Such brief may not exceed fifteen (15) pages in length, double-spaced, at no less than a 12-point font. The Clerk of Council shall provide the other parties copies of any filed briefs.
- (g) At the argument, the appellant and appellee shall present the appeal based upon the following procedures:
 - a. No new evidence or testimony may be presented.
 - b. Argument shall be presented by appellant and appellee in the form of oral argument only and shall be limited to twenty (20) minutes each side. Oral argument shall be based upon the assignments of error submitted with the Notice of Appeal. If more than one (1) appeal is filed, the appeals may be consolidated

and each side shall be allowed a total of twenty (20) minutes for argument or such other time as may be determined by Bexley City Council.

- (h) If upon oral argument, consideration of the record and decision of the Board, and briefs filed pursuant to section (f), Council finds that Appellant has failed to prove, by clear and convincing evidence, the decision of the Board appealed from is not supported by the record or is unreasonable or unlawful, it shall affirm the same.
- (i) Council shall give deference to the findings and conclusions of the Board being appealed from and shall not substitute its judgment for the judgment of the Board.
- (j) Consistent with its findings, Council may affirm, reverse, vacate, or modify the order, adjudication, or decision of the Board. The concurrence of two-thirds of the members of Council at the argument on appeal is required for Council to reverse, vacate or modify any decision of the Board. Absent such a two-thirds majority of the members of Bexley City Council at the argument on appeal, the decision of the Board is affirmed.
- (k) The decision of Council shall be subject to appeal as provided in the Ohio Revised Code.
- (l) Bexley City Council shall issue written Findings of Fact and Conclusions of Law within thirty (30) calendar days after the hearing and serve them on all parties.
- (m) In any appeal to Council, ~~Bexley~~ Bexley City Council may consider and determine any motions filed, make procedural determinations, and for good cause continue or amend any of the periods or deadlines provided in this section except for the time for filing the Notice of Appeal, which cannot be enlarged or altered. **By a vote of a simple majority, City Council may, at its sole discretion, decline jurisdiction based upon a conflict of interest or perceived conflict of interest or for any other cause which Council deems appropriate. Should Council decline jurisdiction, the decision of the Board of Zoning and Planning is deemed final and binding.**
- (n) **After an appeal has been filed, and prior to any final determination by City Council, the Zoning Officer shall suspend any active permits pertaining to that part of the application that is under appeal and shall withhold the issuance of any new permits pertaining to that part of the application that is under appeal.**
- (o) This section supersedes any references to appeals to Council in the ~~Bexley~~ Bexley City Ordinances that are inconsistent herewith.

Section 2.

That this Ordinance shall go into effect, and be in force from and after the earliest period allowed by law.

Passed:

June 14, 2022



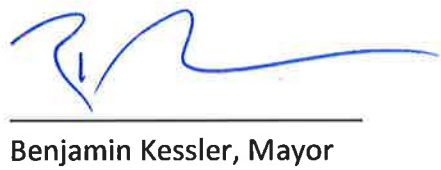
Troy D. Markham, President of Council

Attest:



Matthew McPeck, Clerk of Council

Approved: June 14, 2022



Benjamin Kessler, Mayor

Reading Dates:

- First Reading: May 12, 2022
- Second Reading: May 26, 2022
- Third Reading: June 14, 2022
- Amendment: June 14, 2022