

CHAPTER 1264
Board of Zoning Appeals

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CROSS REFERENCES

- Original plats - see Ohio R.C. 711.01 et seq.
Municipal corporation may adopt general rules and regulations; violations; effective date - see Ohio R.C. 711.101 et seq.
Vacating plats - see Ohio R.C. 711.17 et seq.
Revision of plats - see Ohio R.C. 711.28 et seq.
Lost or destroyed records - see Ohio R.C. 711.34 et seq.
General provisions and definitions - see P. & Z. Ch. 1260
Administration, enforcement and penalty - see P. & Z. Ch. 1262
Districts generally and Zoning Map - see P. & Z. Ch. 1266
Review of subdivision applications in flood hazard areas - see B. & H. 1462.08(a)(4)

1264.01 CREATION, MEMBERSHIP AND TERM.

(a) There is created a Board of Zoning Appeals (hereafter called the Board) which shall be composed of five members who are electors of the Village and who are qualified by experience and training to pass upon matters pertaining to zoning. At least one member shall also be a member of the Village Planning Commission. The members of such Board shall be appointed by the Mayor, who shall also designate the Chairperson of the Board. The term of a member shall be for a term of six years, beginning on January 1 of the even numbered years, except that of the first term, and each member shall serve until his or her successor is appointed and qualified. In case of a vacancy, the Mayor may appoint a member to the unexpired term of the member which caused such vacancy. The Village Building Inspector shall attend all Board meetings in order to provide his or her guidance and expertise.

(b) For the first term, the Mayor shall appoint two members for the term expiring on January 1, 1960, two members for a term expiring on January 1, 1962, and one member for a term expiring on January 1, 1964.

(Ord. 73-94. Passed 10-4-94.)

1264.02 RULES AND REGULATIONS; MEETINGS.

The Board shall adopt such rules and regulations as may be necessary for the purpose of carrying out its functions and duties and which are not in conflict with the provisions of this Zoning Code. Regular meetings of the Board shall be held once a month on the same day of the week, to be determined by the Board, and on such special dates as may be necessary, as determined by the Chairperson.

(Ord. 73-94. Passed 10-4-94.)

1264.03 PUBLIC MEETINGS; MINUTES; ATTENDANCE; VOTING.

All meetings of the Board shall be public and all voting on matters shall be by yeas and nays in open public meetings. Minutes of all meetings shall be kept, showing the attendance of each member and the vote of each member on any matter. Such minutes shall be kept at the office of the Board and shall be a matter of public record. Attendance of members shall be in person and the presence of three members shall constitute a quorum. The concurring vote of three members shall be necessary to dispose of any matter before the Board.

(Ord. 73-94. Passed 10-4-94.)

1264.04 JURISDICTION.

(a) The Board shall have jurisdiction:

- (1) To hear and decide appeals from the refusal of building permits by the Building Inspector or other officers, to permit exceptions to and variations from the district regulations, and to administer the regulations as specified therein.
- (2) To hear like appeals on matters relating to the Building Code when authority is given to the Board by the Council, but in such case, its power to dispose of the appeal shall be limited to an affirmance or reversal of the action of the Building Inspector.

- (3) To hear and decide applications, certified by the Building Inspector, by a person seeking a conditional use.
- (4) To hear and decide applications, certified by the Building Inspector, by a person seeking a determination for a similar use.
- (5) To hear and to decide applications for variances from the terms of this Zoning Code, certified by the Building Inspector, in the following cases: when, owing to special conditions, a literal enforcement of this Code would result in practical difficulty, or, in the case of a use variance, a literal enforcement of this Code would result in unnecessary hardship.
- (6) To hear and decide applications, certified by the Building Inspector, by a person seeking to replace a lawful nonconforming use with another nonconforming use.
- (7) To hear and decide any matter specifically referred to it by any section of this chapter.

(b) All such jurisdictions shall be exercised in the manner and under the conditions herein established.

(Ord. 73-94. Passed 10-4-94.)

1264.05 DECISIONS OF THE BOARD.

(a) At the conclusion of a public hearing, the Board shall vote and announce its decision, together with any terms and conditions to approval. Such decision shall be entered in the minutes of the meeting, or kept in a special book maintained solely for decisions of the Board.

(b) In case the Board desires more time to study the subject matter, it shall announce at the public hearing that the meeting be adjourned to a specified date, time, and place, at which time it shall meet, vote, and announce its decision as above provided. A second continuance may be taken by the Board, at the end of which time it must vote and decide the subject matter. The Board shall not take more than two continuances and no continuance shall be for a longer period of time than two weeks, nor for a shorter period than five days, except for good cause shown and noted in the minutes.

(c) Upon making a decision, the same shall be entered within one week in the minutes of the Board or in a special book, and within such week a copy thereof, or a memorandum thereof, shall be mailed to the following: the Village Planning Commission and the Clerk/Treasurer.

(d) All decisions of the Board, except where the decision of the Building Inspector is sustained without any modifications, deletions, or additions thereto, shall not go into effect or become final until thirty days after the rendition of such decision.

(e) During the thirty-day period after a decision of the Board of Zoning Appeals, the Council shall have the right to disapprove the same. The Council may approve a decision by passing an ordinance to that effect, or by permitting the thirty-day period to lapse without taking any action, in which event the decision shall become final on passage of such approving ordinance, or at the expiration of the thirty-day period. To indicate its disapproval of such decision, the Council must pass an ordinance clearly indicating its disapproval. Upon passage of such ordinance, the decision of the Board shall not become effective. In passing such an ordinance, the Council may assign reasons for its disapproval, but such reasons shall not be deemed to extend beyond the action in that particular case and shall not be deemed to be a part of this Zoning Code or have the effect of an amendment thereto. Relative to the decisions mentioned in this section, the administrative remedies of the parties, whether of the applicant or taxpayer, shall not be deemed to have been exhausted until action of the Council or until it has permitted the thirty-day period to expire without acting.

(Ord. 73-94. Passed 10-4-94.)

1264.06 GENERAL REQUIREMENTS FOR APPEALS AND APPLICATIONS.

(a) Appeals. Before an appeal can be heard, formal action by the Building Inspector, in the form of a denial, reversal, or revocation, must take place. An appeal to the Board of Zoning Appeals must be filed with the Building Inspector within fifteen days after a ruling of denial, reversal, or revocation. The decision of the Building Inspector shall become final if an appeal is not filed within fifteen days. The filing of an appeal requires a deposit of seventy-five dollars (\$75.00).

(b) Applications for Conditional Use, Similar Use, Variance, and Replacement of Non-conforming Use. An application for a conditional use, similar use, variance, or a replacement of a nonconforming use must be filed with the Building Inspector. Such application requires the following fee:

- (1) Seventy-five dollars (\$75.00) if the application applies to any Residential District; or
- (2) One hundred dollars (\$100.00) if the application applies to any other district.

(c) Provision of Necessary Materials. Before certifying such application to the Board of Zoning Appeals, the Building Inspector may require all data, papers, charts, maps and schedules which he or she deems the Board may require to properly understand the nature of the application. The Board shall not be required to hear the appeal or application until the necessary materials have been provided. Failure to provide such materials due to neglect or refusal of the applicant may result in the dismissal of the appeal or application.

(Ord. 73-94. Passed 10-4-94.)

1264.07 STANDARDS FOR THE GRANTING OF VARIANCES, CONDITIONAL USES, SIMILAR USES, AND CHANGED NON-CONFORMING USES.

(a) In General. To authorize a variance from the terms of this Zoning Code, and to grant a conditional use, similar use, or changed nonconforming use, the Board of Zoning Appeals must determine the following:

- (1) That the granting of the variance will not be contrary to the general purpose, intent, and objective of this Zoning Code;
- (2) That the granting of the variance will not be detrimental to the public health, safety, moral and general welfare;
- (3) That the granting of the variance will not harmfully affect the property or rights of adjacent property owners or future development of the neighborhood in which the variance is requested; and
- (4) That the reasons for requesting the variance more than outweigh the reason for holding to the strict letter of this Zoning Code.

(b) Failure to Comply With Terms and Conditions. A written complaint by a public official or private citizen can be filed with the Building Inspector concerning the breach of any terms, conditions, or provisions required by the Board of Zoning Appeals in the granting of any variance, conditional use, similar use, or changed nonconforming use. The Board of Zoning Appeals shall hold a public meeting after giving the user ten days written notice of such complaint, as well as the date, time, and place of the hearing, and a copy of this section of this Zoning Code. If the Board determines at the meeting that the user has substantially failed and neglected to comply with the terms and conditions set, then such use under the variance, conditional use, similar use, or changed nonconforming use shall cease and be forfeited, and any future use shall be unlawful under this chapter. The person aggrieved by such determination of the Board shall have the right to appeal to the courts.

(Ord. 73-94. Passed 10-4-94.)

1264.08 GRANTING OF VARIANCES.

(a) Authority of Board of Zoning Appeals. When granting a variance, the Board of Zoning Appeals shall have the authority to do the following:

- (1) Vary the yard or height regulations for a permitted principal or accessory building or structure where there is an exceptional or unusual physical condition of a lot when the condition is not generally prevalent in the neighborhood and which, when related to the yard regulations of this Zoning Code, would prevent a reasonable arrangement of buildings on the lot.
- (2) Vary the lot area or width requirements where there is an exceptional or unusual physical condition of a lot, when the condition is generally not prevalent in the neighborhood.
- (3) Vary the sign regulations where the topography or existing buildings interfere with the usual visibility under such conditions.
- (4) Vary the location of garages in residential districts due to unusual conditions of the topography, grade, and available maneuvering space.
- (5) Vary the applicable off-street parking requirement established in Chapter 1282 when there are exceptional or unusual circumstances that result in practical difficulty in complying with the requirements.
- (6) Vary other terms of this Zoning Code when given the authority to do so in any section of this Code.

(b) Time Limits. The Board of Zoning Appeals may limit the time in which a granted variance will remain valid and stipulate that the variance will be unlawful upon the expiration of such time, but no variance shall remain valid for more than one year from the date of approval by the Board of Zoning Appeals. After expiration of such a time limit, an application for a new variance may be made in the same manner as the original. The Board shall take the changed characteristics of the neighborhood into consideration when reviewing the new variance.

(c) Terms and Conditions. The Board may attach terms and conditions to the granted variance as may be reasonable for the health, safety, and welfare of the neighborhood. Such terms and conditions may consist of:

- (1) Installation of devices for stifling noise, dirt, smoke, odors and other factors harmful to the neighborhood;
- (2) Installation of fences, hedges, shrubs, or other shielding devices and the installation of bumper guards for automobiles;
- (3) Restriction or elimination of a use incident to the main use, such as illumination or advertisement signs;
- (4) Restriction of the variance to certain periods of the day or to certain seasons of the year; and
- (5) Such other terms and conditions as may be necessary.

In order to secure the fulfillment of such terms and conditions, the Board may rule that a variance cease upon breach of such conditions, or the Board may require a safety bond, in an amount to be decided by the Board, to insure their fulfillment.

(Ord. 73-94. Passed 10-4-94; Ord. 68-00. Passed 7-11-00.)

1264.09 GRANTING OF A CONDITIONAL USE.

(a) No conditional use shall be granted unless:

- (1) The proposed use be properly located in relation to any adopted plan of land use, major thoroughfares, or secondary or local streets, for the surrounding area.
- (2) The proposed use generates a minimum of vehicular traffic through residential neighborhoods when located on a local street.
- (3) The proposed use is necessary to serve the surrounding residential area, which cannot be served by the same use permitted in a nearby less restricted district.
- (4) The location, design, and operation of such conditional use will not adversely affect a surrounding residential area.
- (5) The conditional use is necessary to serve the community needs where existing similar facilities in less restricted districts has proven inadequate.
- (6) The conditional use will not create any dust, smoke, fumes, glare, noxious odors, vibrations or other influences that would unreasonably and adversely affect adjacent properties.
- (7) The hours of operation and the concentration of vehicles in connection with the conditional use will not unreasonably and adversely affect adjacent properties.

(b) The Board of Zoning Appeals may attach terms and conditions to the granting of a conditional use and may require a bond for their fulfillment as is regulated for the granting of variances in Section 1264.08.

(Ord. 73-94. Passed 10-4-94.)

1264.10 GRANTING OF A SIMILAR USE.

(a) No similar use shall be granted unless:

- (1) A majority of the basic characteristics of the similar use conform to a majority of the basic characteristics of the uses listed in the district to which the use is to be added.

- (2) The similar use does not create a danger to health, safety, and welfare, and does not create offensive noise, vibration, dust, fumes, smoke, odor, glare or other objectional influences to an extent greater than normally resulting from other uses listed in the district to which it is to be added.
- (3) The similar use does not create traffic to a greater extent than the listed uses in the district to which it is to be added.

(b) A similar use granted by the Board of Zoning Appeals shall be subject to the same regulations and conditions provided for any applicable use in the district in which it is located. Variances from the regulations of the district in which the use is located must be applied for separately. In such cases, the Board may grant the similar use and deny or grant the variance. Where a similar use application is denied, the jurisdiction of the Board ceases and no variance shall be granted unless a formal application is filed with the Building Inspector.

(Ord. 73-94. Passed 10-4-94.)

1264.11 GRANTING OF A CHANGED NONCONFORMING USE.

(a) No changed nonconforming use shall be granted unless:

- (1) A majority of the basic characteristics of the changed nonconforming use conform to a majority of the basic characteristics of the old nonconforming use.
- (2) The changed nonconforming use does not create a danger to health, safety, and welfare and does not create offensive noise, vibration, dust, fumes, smoke, odor, glare or other objectional influences to an extent greater than normally created by the old nonconforming use.
- (3) The changed nonconforming use does not create traffic to a greater extent than the old nonconforming use.

(b) The Board of Zoning Appeals may attach terms, conditions and time limits to the granting of a changed nonconforming use and may require a bond for their fulfillment as is regulated for the granting of variances in Section 1264.08.

(Ord. 73-94. Passed 10-4-94.)