

## **CHAPTER 1119**

### **APPEAL; BOARD OF ZONING APPEALS**

#### **1119.01 BOARD ESTABLISHED**

A Board of Zoning Appeals is hereby created and shall have all the powers and duties prescribed by law and by this Zoning Code.

#### **1119.02 BOARD COMPOSITION, APPOINTMENT, TERM**

The Board shall consist of six members, five to be appointed by the Mayor and approved by Council. Each member shall be appointed for a period of three years, except that two of the initial members shall be appointed for one year, and two of the initial members shall be appointed for two years. In the event of death or resignation of a member, the Mayor, with the approval of Council, shall make the appointment for the duration of the unexpired portion of the term of the member. The members of the Board shall be residents of the City and shall serve without compensation. The sixth member will be the Director of Public Safety and Service. The Director of Public Safety and Service will have no voting rights on issues before the Board. The Clerk of Council, or other person designated by Council, shall serve as secretary of the Board of Zoning Appeals. (Ord. L-05. Passed 9-6-05.)

#### **1119.03 BOARD ORGANIZATION**

The Board of Zoning Appeals shall elect a chairman and vice-chairman from its membership.

#### **1119.04 QUORUM**

The Board of Zoning Appeals shall require a quorum of three members at all its meetings, and the concurring vote of three members shall be necessary to effect any order.

#### **1119.05 MEETINGS**

The Board of Zoning Appeals shall meet at the call of its chairman or two other members, and at such other regular times as it may by resolution determine. All meetings of the Board shall be public. The Board may meet in executive session if permitted by applicable state law.

#### **1119.06 WITNESSES**

The Board of Zoning Appeals chairman or acting chairman may administer oaths and compel the attendance of witnesses in all matters coming within the review of this Zoning Code.

#### **1119.07 POWERS AND DUTIES**

The Board of Zoning Appeals, as herein created, is a body of limited powers.

- A. Appeals. The Board shall hear and determine all appeals from any decision or action of the Director of Public Safety and Service in the administration or enforcement of this Zoning Code. The Board shall hear and determine all appeals from the refusal of the Director of Public Safety and Service or Planning Commission, because of anything contained in this Zoning Code, to issue zoning certificates or conditional zoning certificates.
- B. Variances. The Board shall authorize variances when in specific cases such variance from or exception to the terms of this ordinance will afford justice and will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unreasonable hardship and subject to limitations detailed in Section 1119.09.
- C. Conditions Necessary for Granting a Variance. A variance from the terms of this ordinance shall be granted by the Board only if all the following conditions are established by the appellant in addition to other requirements of this section:
1. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings in the same district.
  2. Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.
  3. The special conditions and circumstances do not result from the actions of the applicant.
  4. There are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use or development of the property that do not apply generally to other properties or uses in the same zoning district or neighborhood.
  5. Granting the variance would be in harmony with the general purpose and intent of this ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.
  6. The requested variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
- D. Variance for Nonconforming Use. No nonconforming use of neighboring lands, structures, or buildings in the same district or nonconforming use of lands, structures, or buildings in other districts shall be considered the sole grounds for granting a variance.

- E. Conditions and Safeguards. In granting any variance the Board of Zoning Appeals may prescribe appropriate conditions and safeguards reasonably necessary for the protection of the health, safety, and welfare of the citizens of the city.
- F. Violation of Conditions and Safeguards. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Section 1117.07.
- G. Use/Conditional Use Not Permitted. Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use or conditional use not permitted by this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.
- H. Board of Zoning Appeals Findings. Every decision of the Board shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case. Each such resolution shall be filed in the office of the Board by case number under one or another of the following headings: interpretation; certificate; conditional certificate, or variances, together with all documents pertaining thereto. In the event that the Board will find it necessary to draw upon any planning, legal, engineering or any other expert testimony, the Board shall charge a reasonable fee in order to cover all expenses of such expert testimony.

**1119.08 POWER OF BOARD IN REVERSING DECISION OR GRANTING VARIANCE**

In exercising the above-mentioned powers, the Board of Zoning Appeals may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the Director of Public Safety and Service or Planning Commission from whom the appeal is taken, subject to the limitations in Section 1119.09

**1119.09 LIMITATIONS ON BOARD'S POWER TO ACT**

- A. The Board may issue a variance for the extension of a structure or use into a more restricted district, but not more than 25 feet beyond the boundary line of the district in which such use is authorized, where a use district boundary divides a lot in single ownership.
- B. The Board may issue a variance for the expansion of structures or construction of new structures on premises devoted to a nonconforming use where the cost of such expansion during any ten-year period does not exceed 50 percent of the value at which the existing structures stand on the tax duplicate, or the value of the structure as determined by appraisal or in any one-year period to an extent exceeding 30 percent of such value, and together with such conditions as the Board may deem appropriate to minimize the nonconforming character of the use.

- C. The Board may not increase the density for residential development in any residential district or for conditional multifamily dwellings by more than 25 percent. The Board shall not alter the dwelling unit size in any residential area.
- D. The Board may issue a variance for the erection or temporary placement of buildings, or the use of structures and premises in residential districts, that do not conform to the regulations of such districts, for a period of not more than 18 months where such structures are temporary only and uses are clearly incidental to and necessary for residential development.
- E. The Board may not reduce parking requirements more than 25 percent below those required in Chapter 1107.
- F. The Board may not reduce the requirements for minimum front yard, side yard and rear yard depths, minimum lot area, lot frontage, lot width at the building line, or maximum lot depth by more than 25 percent unless such requirements are approved by a unanimous vote of the Board members present at the meeting. (Ord. 32-96. Passed 9-3-96.)
- G. When the Board is satisfied that the location, nature or uniqueness of the use makes a variance appropriate, 50 percent of the required parking area may remain unimproved and retained in landscaped area until such time as its use is required.
- H. The Board may not increase the maximum sign sizes or heights, or reduce sign setback requirements unless a four fifths (4/5) vote of the Board approves the request. When less than five (5) members are present, it shall take a unanimous vote of the members present to approve the request. (Amended Ord. C-05, Passed 2-7-05.)

(Ord. 78-95. Passed 12-4-95.)

#### **1119.10 BOARD'S AUTHORITY TO REQUIRE USE OF VACANT LAND**

In any case in which a request for a variance is granted by the Board wherein the acquisition and use of additional adjacent land is a prerequisite for the granting of such a variance, then such additional land must be in the same ownership or be under a nonrevocable lease for a term specified by the Board. The variance shall be valid only so long as this condition exists. If later conditions justify, such joined land may be separated by the Board.

#### **1119.11 APPLICATION FOR APPEAL**

Applications appealing any decision authorized to be appealed to the Board of Zoning Appeals shall be filed on forms supplied by the Director of Public Safety and Service and shall be submitted to the Secretary of the Board of Zoning Appeals with the required fee within fifteen

(15) calendar days after the date of the decision rendered by the Director of Public Safety and Service or Planning Commission.

### **1119.12 FORM OF APPEAL OR APPLICATION**

An appeal or application to the Board of Zoning Appeals shall be initiated by the appellant or applicant by filing with the Secretary of the Board of Zoning Appeals a written appeal or application containing:

- A. Name and address of the appellant or applicant and/or his representative.
- B. Description of the property involved.
- C. Description of the nature of the appeal or variance requested.
- D. In cases of variances or conditional zoning appeals, a narrative statement demonstrating the compatibility of the variance with neighboring properties is required.
- E. Plans of the site indicating the location of all buildings, parking and loading areas, traffic access and circulation, open spaces, landscaping, refuse and service areas, utilities, signs, yards, and/or such other information necessary to properly evaluate the request.
- F. A nonrefundable fee to reimburse the city for such expenses as clerical, drafting, engineering, investigation, public notice and hearing, and advertising incidental to the processing of the appeal or application. A schedule of fees is available from the Director of Public Safety and Service and is listed in Section 1117.08 of this ordinance.

### **1119.13 HEARING**

The Board of Zoning Appeals shall hold a public hearing on each appeal and written notice of the hearing shall be sent by the secretary of the Board of Zoning Appeals by first class mail at least ten (10) days before the date of the hearing to the owners of property within and contiguous to and directly across the street from the property which is the subject of the appeal. Such written notices shall be mailed to the addresses of such owners appearing on the current tax list of the county. The Board, at its discretion, may provide public notice through advertisement in a general circulation newspaper or send out additional notices to publicize a hearing. The Board may recess the hearing from time to time and, if the time and place of the continued hearing is publicly announced at the time of recess, no further notice will be required. The failure of delivery of such notice will not invalidate any action taken by the Board on such appeal.

#### **1119.14 TIME WITHIN WHICH BOARD MUST ACT**

Each appeal received by the Board of Zoning Appeals shall be acted upon by it within sixty (60) days from the date it is filed with the Board unless extended by the Board for an additional sixty (60) days.

#### **1119.15 TIME LIMIT ON BOARD ACTION**

Any variance granted by the Board shall be automatically cancelled if not exercised within one (1) year following its passage or if the area in which it is located is rezoned before it is exercised. Any time thereafter an appeal or application voided by the above provisions may be renewed by the Board, giving consideration to changes in the neighborhood and/or zoning.

#### **1119.16 GRANTING OF APPEALS OR APPLICATIONS**

Any appeal or application granted by the Board of Zoning Appeals shall not be personal but shall run with the land.

#### **1119.17 PROCEDURE**

The Board of Zoning Appeals shall act in accordance with the procedure specified by law, including this Zoning Code. The Board shall keep minutes of its proceedings showing the vote of each member upon every question, or if absent or failing to vote, it shall indicate such fact.

All appeals and applications made to the Board shall be in writing and on the forms prescribed therefor. Every appeal or application shall refer to the specified provision of the Zoning Code involved, and shall exactly set forth the interpretation that is claimed, the use for which the certificate or conditional certificate is sought or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.

#### **1119.18 APPEAL OF DECISION BY BOARD OF ZONING APPEALS**

Any person or persons, or any board, taxpayer, department, or bureau of the city aggrieved by any decision of the Board of Zoning Appeals may seek review by a court of record of such decision in the manner provided by the laws of the State of Ohio, particularly by the administrative appeals section of the Ohio Revised Code.

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