

**CHAPTER 1111  
Appeals and Variances**

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**1111.01 APPEALS TO THE BOARD OF BUILDING AND ZONING APPEALS.**

Appeals to the Board concerning interpretation or administration of this Code may be submitted by any person, firm or corporation deeming him/herself or itself to be adversely affected or by any officer or bureau or the legislative authority of the City affected by any decision of the Zoning Administrator, or by any administrative officer deciding matters relating to this Planning and Zoning Code.

(Ord. 2009-27. Passed 10-19-09.)

**1111.02 INITIATION OF APPEAL.**

Applications for appeal shall be filed with the Zoning Administrator and thereby with the Board within 20 days after the date of any adverse order, requirement, decision, or determination. The application for appeal shall include reference to the decision, the provision of this Planning and Zoning Code from which the appeal is sought, and reasons for the appeal. The Zoning Administrator shall transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

- (a) For the purposes of this Chapter, an applicant's request for a variance from the terms of this Planning and Zoning Code shall be considered as an appeal to the Board of Building and Zoning Appeals, subject to the regulations set forth in the Chapter.
- (b) A request for an appeal or a variance or other matters for which the Board has the power to authorize shall be submitted to the Board by the owner of the property involved or a person having an interest in such property and acting under written authority of the owner. (Ord. 2009-27. Passed 10-19-09.)

**1111.03 PUBLIC HEARING BY THE BOARD.**

When an application for appeal has been filed in proper form with the Board of Building and Zoning Appeals and the application fee has been paid, the Zoning Administrator shall immediately place the request upon the calendar for public hearing before the Board of Building and Zoning Appeals.

- (a) The Board shall hold a public hearing within forty-five (45) days after the receipt of a completed application for an appeal.
- (b) The Board may recess such hearings from time to time, and, if the time and place of the continued hearing is publicly announced at the time of the adjournment, no further notice shall be required. Any person in interest may appear at the public hearing in person or by attorney. (Ord. 2009-27. Passed 10-19-09.)

#### **1111.04 NOTICE OF PUBLIC HEARING.**

Before holding the public hearing, notice of such hearing shall be provided according to the following:

- (a) Notice of the public hearing shall be given in one or more newspapers of general circulation in the City at least 10 calendar days before the date of such public hearing.
- (b) Written notice of the public hearing shall be mailed at least ten (10) calendar days before the day of the hearing to the applicant and all parties having proprietary interest in land within 200 feet of the property to which such appeal relates. Failure of delivery of such notice shall not invalidate action taken on such application.
- (c) All notices shall set forth the time, place and nature of the public hearing. (Ord. 2009-27. Passed 10-19-09.)

#### **1111.05 STAY OF PROCEEDINGS.**

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Building and Zoning Appeals after the notice of the appeal has been filed, that by reason of facts stated in the application, a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board or by a court of record on application, on notice to the Zoning Administrator from whom the appeal is taken on due cause shown. (Ord. 2009-27. Passed 10-19-09.)

#### **1111.06 REVIEW OF APPEAL.**

The Board of Building and Zoning Appeals shall review the appeal. To aid in their review, the Board may transmit the application to appropriate administrative departments and professional consultants for review and comment. Any reports, comments or experts opinions shall be compiled by the Zoning Administrator and transmitted to the Board prior to the time of the Board's review. (Ord. 2009-27. Passed 10-19-09.)

#### **1111.07 DECISION OF THE BOARD.**

Within its powers, the Board of Building and Zoning Appeals may reverse or affirm, wholly or in part, the decision being appealed, and to that end shall have all the powers of the officers from whom the appeal is taken, and it may direct the issuance of a permit or certificate.

- (a) The Board shall render a decision on the appeal within 30 days from the date of the hearing unless an extended period of time is mutually agreed upon by the applicant and the Board.
- (b) The Board shall notify the appellant in writing of the decision of the Board.
- (c) The Zoning Administrator, or his/her designee, shall keep minutes of all proceedings upon appeal, showing the vote of each member thereon, and shall keep record of the Board's official actions.
- (d) Once the appellant has received the Board's decision, he/she shall, within 12 months following the date of approval submit an application for a zoning certificate, conditional use certificate, or other action that complies with the Board of Building and Zoning Appeal's decision.
  - (1) A copy of the Board of Building and Zoning Appeal's decision shall be attached to the application.
  - (2) If action is not taken by the appropriate party within the above-specified time frame, the authorization of the appeal shall become null and void, and reapplication to the Board shall be necessary. (Ord. 2009-27. Passed 10-19-09.)

#### **1111.08 REAPPLICATION OF APPEALS AND VARIANCES.**

If the Board of Building and Zoning Appeals denies the appeal and/or the variance, the Board need not rehear the application unless substantial new evidence is submitted. (Ord. 2009-27. Passed 10-19-09.)

#### **1111.09 VARIANCES.**

The Board of Building and Zoning Appeals shall have the power, in specific cases, to vary the application of certain provisions of this Code in order that the public health, safety, morals and general welfare may be safeguarded and substantial justice done. The Board may authorize upon appeal in specific cases such variance from the terms of this Planning and Zoning Code as will not be contrary to the public interest according to the following procedures:

- (a) Application Requirements. An application for a variance shall be filed with the Zoning Administrator for review by the Board of Building and Zoning Appeals upon the forms provided, and shall be accompanied by the submission requirements in Section 1115.13, Submission Requirements for Variance Requests.
- (b) Review for Completeness. Within twenty (20) days after receiving an application for variance, the Zoning Administrator shall review the submitted application for completeness and compliance with the applicable submission requirements. If the application is deemed insufficient, the Zoning Administrator shall notify the applicant of the necessary changes or additional information needed. When the application is deemed complete and the application fee has been paid, the Zoning Administrator shall officially accept the application for consideration of the action(s) requested on the date such determination is made and place it on the Board of Building and Zoning Appeals' agenda.

- (c) Review by the Board. According to the procedures established for appeals in Sections 1111.03 and 1111.04, the Board shall hold a public hearing and give notice of the same. The Board shall review each application for a variance to determine if it complies with the purpose and intent of this Planning and Zoning Code and evidence demonstrates that the literal enforcement of this Planning and Zoning Code will result in practical difficulty or unnecessary hardship.
- (1) Area Variance. The following factors shall be considered and weighed by the Board to determine practical difficulty:
- A. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district. Examples of such special conditions or circumstances are exceptional irregularity; narrowness, shallowness or steepness of the lot; or proximity to non-conforming and inharmonious uses, structures or conditions.
  - B. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
  - C. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
  - D. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
  - E. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, trash pickup;
  - F. Whether the property owner purchased the property with knowledge of the zoning restrictions;
  - G. Whether special conditions or circumstances exist as a result of actions of the owner;
  - H. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
  - I. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance;
  - J. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district; and
  - K. Whether a literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Code.

- (2) Use Variance. In order to grant a use variance, the Board of Building and Zoning Appeals shall determine that strict compliance with the terms of this Planning and Zoning Code will result in unnecessary hardship to the applicant. The applicant must demonstrate such hardship by clear and convincing evidence that all of the following criteria are satisfied:
- A. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located;
  - B. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
  - C. The hardship condition is not created by actions of the applicant;
  - D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
  - E. The granting of the variance will not adversely affect the public health, safety or general welfare;
  - F. The variance will be consistent with the general spirit and intent of the Planning and Zoning Code; and
  - G. The variance sought is the minimum that will afford relief to the applicant.
- (d) Requests for Additional Information. The Board of Building and Zoning Appeals may request that the applicant supply additional information that the Board deems necessary to review and evaluate the request for a variance.
- (e) Additional Conditions and Safeguards. The Board may further prescribe any conditions and safeguards that it deems necessary to ensure that the objectives of the regulation(s) or provision(s) to which the variance applies will be met.
- (f) Action by the Board. The Board shall act according to the procedures established for appeals in Section 1111.07.
- (1) The Board shall either:
    - A. Approve,
    - B. Approve with supplementary conditions, or
    - C. Disapprove the request for appeal, variance, or exception.
  - (2) The Board shall further make specific findings of fact based directly on the particular evidence presented that the reasons set forth in the application and as presented by the applicant during the public hearing, justify the granting of the variance that will make possible a reasonable use of the land, building, or structure.
- (g) Term and Extension of Variance. Variances shall expire one year from the date of their enactment, unless prior thereto, the applicant commences actual construction in accordance with the granted variance or an extension of time has been granted by the Board of Building and Zoning Appeals. There shall be no modification of variances except by further

consideration of the Board. Once the time limit pursuant to this Section has expired, a request for a variance shall be considered to be a new application for a variance and shall meet all requirements for application and review pursuant to this Section.

(Ord. 2009-27. Passed 10-19-09; Ord. 2012-24. Passed 8-20-12.)

**1111.10 APPEAL OF BOARD'S DECISION.**

Any person aggrieved by any action or decision of the Board under this Code including the City or any officer or official thereof, or upon the direction of Council or the Mayor may appeal any such action or decision to the Court of Common Pleas under Ohio R. C. Ch. 2506. (Ord. 2006-49. Passed 5-21-07.)