

CHAPTER 1135

PLANNING AND ZONING BOARD OF APPEALS

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CROSS REFERENCES

Planning and Zoning Board- see O.R.C. 713.11.

Zoning amendments- see P. & Z. 1137.03

Unit residential development plans- see P. & Z. 1149.03

1135.01 CREATION: (amended by Ord. 94-16)

A Planning and Zoning Appeals Board is hereby created in accordance with Ohio Revised Code 713.11.

1135.02 MEMBERSHIP AND APPOINTMENT: (amended by Ord. 94-16)

The Planning and Zoning Appeals Board shall consist of five members, appointed by Council. Council may remove any member of such Board for cause upon written charges and after public hearing. Vacancies shall be filled by the appointing authority for the unexpired term of the member affected. Members of such Appeals Board shall serve five-year terms and shall be eligible for reappointment.

1135.03 ORGANIZATIONS: (amended by Ord. 94-16)

The Planning and Zoning Appeals Board shall elect its own officers annually and shall adopt the rules necessary to the conduct of its affairs. Meeting shall be held at the call of the chairman at such other times as the Board may determine. Four members of the Boards shall constitute a quorum for the conducting of business. The chairman, or in his absence, the acting chairman, may administer oaths and compel to the attendance of witnesses. All meetings and records shall be open to the public.

1135.04 OFFICIAL ACTION: (amended by Ord. 94-16)

The Planning and Zoning Appeals Board shall act by resolution or motion and shall keep minutes of its proceedings, showing the vote of each question, or if absent, or failing to vote, the facts of each appeal considered by the Board, and the section of this Zoning Code, where applicable, which the Board has considered in approving or disapproving any petition or other matter brought before the Board.

1135.05 RIGHT OF PETITION OR APPEAL: (amended by Ord. 94-16)

Any person, property owner, tenant, or any governmental officer, department, board or bureau may apply for a conditional use permit, or a variance or exception from the strict applications of the terms of this Zoning Code, or appeal a decision of the enforcing officer (the Village Mayor or a person whom he designates) to the Planning and Zoning Appeals Board, subject to the limitation contained in this chapter.

Petitions for conditional use permits or variance concerning any parcel of property, portion thereof or use thereon shall not be accepted for consideration more than once during any consecutive twelve-month period.

An appeal of a ruling of the enforcing officer shall stay all proceedings unless the enforcing officer certifies that, by reason of facts pertaining to the matter in question, a stay in his opinion would cause imminent peril to life and property. When such certification is made, proceedings shall not be stayed except by a restraining order granted by the Appeals Board or by the Court of Common Pleas.

1135.06 APPLICATION FEES: (amended by Ord. 94-16)

- (a) Each application for a variance or exception shall be accompanied by a fee of one-hundred dollars (\$100.00).
- (b) Each application for a conditional use permit shall be accompanied by a fee of one-hundred dollars (\$100.00).
- (c) Application fees shall not be refunded in any case.

1135.07 HEARING: (amended by Ord. 94-16)

The Appeals Board shall fix a reasonable time, date and place for the hearing of any application, petition or appeal. It shall cause the property in question to be posted at least ten days prior to the hearing with a notice containing the time, date, place and purpose of the public hearing on the question. It shall also cause notice of the hearing to be placed in at least one newspaper of general circulation in the Village at least ten days prior to the hearing. It may cause notice of the hearing to be mailed to property owners abutting or near the property in question.

1135.08 POWERS AND DUTIES: (amended by Ord. 94-16)

The Planning and Zoning Appeals Board shall have all the appropriate powers and duties prescribed by law and by this Zoning Code. The Board shall have the following duties and powers:

(a) Administrative Review. To hear and decide appeals only in such cases where it is alleged there is error in any order, requirement, decision or determination made by the enforcing officer in the enforcement of this Zoning Code. The concurring vote of four members of the Appeals Board shall be necessary to reverse any order, requirement, decision or determination of the enforcing officer, or to decide in favor of the applicant on any matter upon which they are required to pass under the terms of this Zoning Code.

(b) Determination of Similar Uses. To determine if uses not specifically mentioned in this Zoning Code are similar to uses permitted within a district.

(c) Determination of District Boundary Location. To determine the exact location of any district boundary if there is uncertainty as to exact location thereof. In making such determination the Appeals Board shall be guided by the provision of Section 1139.03.

(d) Conditional Use Permits. To hear and decide only such conditional uses as the Appeals Board is specifically authorized to pass on under the terms of this Zoning Code or to deny conditional use permits when not in harmony with the intent and purpose of this Zoning Code or the Comprehensive Development Plan. The following requirements shall be complied with prior to any approval or denial of a conditional use permit by the Planning and Zoning Appeals Board.

(1) A written application for a conditional use shall be submitted indicating the section of this Zoning Code under which the conditional use is sought and stating the grounds on which it is requested.

(2) A public hearing shall be held as specified in Section 1135.07.

(3) The Appeals Board shall determine:

A. If it has the authority to grant the request;

B. That the granting of the conditional use will not adversely affect the neighborhood in which the conditional use is to be located.

(4) In granting any conditional use permit, the Appeals Board may prescribe appropriate conditions and safeguards in conformity with the provisions of this Zoning Code and the recommendation of the Planning Board. The Appeals Board shall require a bond to assure conformance to such conditions and safeguards as may be necessary. Violation of such conditions and safeguards shall cause the performance bond mentioned above to be forfeited, and shall be deemed a violation of this Zoning Code and punishable under Section 1133.99. A conditional use permit shall expire in one year after it is issued unless actual construction has taken place or is under way except as provided elsewhere in this Zoning Code.

(e) Variiances. To vary the strict application of any of the requirements of this Zoning Code in the case of exceptionally irregular, narrow, shallow or deep lots, or other exceptional

physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship (not economic in nature) that would deprive the owner of the reasonable use of the land or building involved, but in no other case. The fact that another use would be more profitable is not a valid basis for legally granting a variance. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance. No variance in the strict application of this Zoning Code shall be granted by the Appeals Board unless and until the applicant submits, and the Appeals Board concurs, with the following:

(1) Condition and circumstances. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.

(2) Property rights. That literal interpretation of the provisions of this Zoning Code would deprive the applicant of property rights commonly enjoyed by other properties in the same district under the terms of this Zoning Code.

(3) Applicant not at fault. That the special conditions and circumstances do not result from the actions of the applicant, his agents or prior property owners.

(4) No special privilege. That granting the variance requested would not confer on the applicant any special privilege that is denied in this Zoning Code to other lands, structures or buildings in the same district.

(5) Harmony with locality. That the variance requested shall not alter the essential character of the locality.

(f) Procedure for Consideration of Petitions for Variances.

(1) The Appeals Board shall make a finding that the reasons set forth in the application are valid and justify the granting of the variance. The Appeals Board shall also determine if the variance is for the minimum variance that will make possible the reasonable use of land, building or structure.

(2) Under no circumstances shall the Appeals Board grant a variance, which will permit a use, which is not permitted in the district involved.

(3) The Appeals Board may prescribe appropriate conditions and safeguards in conformity with this Zoning Code and the recommendation of the Planning Board. The Appeals Board shall require a bond to assure conformance to such conditions and safeguards as the Appeals Board may require.

(4) Violation of such conditions and safeguards when such are made a part of these terms under which a variance is granted, shall cause the bond mentioned in subsection (f)(3) hereof to be forfeited and shall be deemed in violation of this Zoning Code and punishable under Section 1133.99.

(5) Prior to taking action on a request for a variance the Appeals Board shall hold a public hearing and give notice to property owners as in Section 1135.07.

(g) Exceptions to the Regulations on Nonconforming Uses. Certain uses which by their record performance over the years, have proven to be the exception to the general rule that isolated commercial uses in residential areas are generators of blight should be given recognition for such performance and proven service to the neighborhood.

Those uses that are permitted in B-2 Convenience Shopping Districts may be eligible for permit by exception provided:

- (1) The use has been in continuous operation for ten years or more;
- (2) The building or structure is in sound, well-maintained condition;
- (3) There are no dilapidated residential structures within 300 feet or such use;

- (4) Such use has no more than four full-time employees;
- (5) That the structures containing such uses continue to be well maintained, yards kept clean and refuse kept in enclosures so as to be out of sight from adjoining residential properties;
- (6) Parking requirements as specified in Section 1167.16 shall be complied with;
- (7) Screening requirements as specified in Section 1167.17 shall be complied with;
- (8) Sign regulations as specified in Section 1167.20 shall be complied with;
- (9) Yards, lot coverage and height limitations of the district in which such use is located are complied with.
- (h) Procedure.
 - (1) No application for a permit by exception shall be considered for approval by the Appeals Board until proof of compliance with the requirements listed in (g)(1) through (9) has been furnished to the Planning Board and a written opinion is given by the Planning Board on each of such items.
 - (2) Prior to taking action on a request for an exception the Appeals Board shall hold a public hearing and give notice to property owners as prescribed in Section 1135.07.
 - (i) Effective Date. The decision of the Appeals Board shall not become final until the expiration of five days from the date of entry of such order unless the Appeals Board shall find that the immediate effect of such order is necessary for the preservation of property or personal rights and shall so certify on the record.