

## **CHAPTER 7 APPEALS, CONDITIONAL USES & VARIANCES**

Any property owner, government officer, department, board or bureau may apply for a conditional use permit, a variance or exception from the strict applications of the terms of this Zoning Code, to the BZA, subject to the limitations contained in this Chapter.

### **SECTION 7.1 – APPEALS**

Within twenty (20) days after a decision is made by the Enforcing Officer, an appeals application may be submitted to the Enforcing Officer specifying the grounds upon which the appeal is being submitted. The Enforcing Officer within seven (7) days, shall forward all submitted documentation for such appeal to the BZA for review.

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/her 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 BZA or by the Court of Common Pleas.

### **SECTION 7.2 – APPLICATION**

An Application for a Conditional Use or Variance shall be submitted indicating the following:

- A.** Name, address and phone number of the applicant.
- B.** Legal description of property.
- C.** Current zoning district.
- D.** State the grounds on why it is being requested.
- E.** Description of existing and proposed uses.
- F.** A plan of all buildings, parking and loading areas, traffic circulation, utilities and such other information as the Enforcing Officer may require to determine if the proposed conditional use meets the intent and requirements of this Zoning Code.
- G.** A statement evaluating the effects on adjoining property, the effect of such elements as noise, glare, odor, light, fumes and vibration on such property, and an evaluation of the general compatibility of the proposed use with adjacent and other properties within the zoning district.
- H.** The names and addresses of all property owners within 200 feet, contiguous to, and directly across the street from the property, as appearing on the Darke County Auditor's current tax list.
- I.** Such other pertinent information as requested by the Enforcing Officer regarding the property, proposed use, or surrounding area.

Each application for conditional use or variance shall be accompanied by a fee set forth and approved by the Village of Arcanum. Application fees are non-refundable.

## **SECTION 7.3 – CONDITIONAL USE**

Under some unusual circumstances, a use may more intensely affect an area than those uses permitted in the zoning district in which it is located, and may nonetheless be compatible with permitted uses, if that use is properly controlled and regulated. The BZA may grant conditional approval for use of the land, buildings, or other structures and may allow such a use to be established where unusual circumstances exist and where the conditional use will be consistent with the general purpose and intent of this Zoning Code.

Applications by a property owner for a conditional use concerning any parcel of property, portion thereof or use thereon, must meet all setback requirements and shall not be accepted for consideration more than once during any consecutive twelve-month period.

### **A. Standards For Conditional Use:**

In addition to the specific requirement for conditionally permitted uses as specified in this Section, the BZA shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location meets all of the following requirements:

1. The use is a conditional use as established under the provisions of this Zoning Code.
2. The use will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.
3. The use will not be hazardous or disturbing to existing or future neighboring uses.
4. The use will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service.
5. The use will not involve activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.
6. The use will otherwise be in conformance with all other sections of this ordinance and consistent with the objectives of this Zoning Code.

## **B. Granting Conditional Use:**

The BZA shall determine:

1. If it has authority to grant said request.
2. That the granting of the conditional use will not adversely affect the neighborhood in which the conditional use is to be located.
3. In granting any conditional use, the BZA may prescribe appropriate conditions and safeguards in conformity with the provisions of this Zoning Code. Violations of such conditions and safeguards, when such are made part of the terms under which a conditional use is granted, shall be deemed a violation of this Zoning Code and punishable under Chapter 3, Section 3.3.
  - a. Upon the granting of a Conditional Use, said permit is subject to annual review by the Enforcing Officer. Said permit shall automatically expire if the conditional permitted use has not been instituted or utilized within one (1) year of the date of issuance.

## **SECTION 7.4 – VARIANCE**

The BZA shall have the power to authorize, upon appeal in specific cases, filed as hereinafter provided, such variances from the provision or requirements of this Zoning Code that would result in practical difficulty and unnecessary hardship, as will not be contrary to the public interest. Such variances shall be granted only in cases of exceptional circumstances.

### **A. Standards for Variance:**

No variance from the strict application of any provision of this Zoning Code shall be granted until the BZA concurs that all of the following exist:

1. Unique conditions and physical circumstances exist in cases of exceptionally irregular, narrow or shallow lot sizes or shapes or exceptional topographical or other physical conditions specific to the land or building for which the variance is sought, and such conditions do not apply generally to land or buildings in the neighborhood or district in which the property is located.
2. Due to such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Zoning Code and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
3. Special conditions and circumstances do not result from the actions of the applicant, his agents or prior property owners.
4. Proof of hardship created by the strict application of this Zoning Code is demonstrated. It is not sufficient proof of hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created nor can it be established on this

basis by one who purchases with or without knowledge of the restrictions. It must result from the application of this Zoning Code and be suffered directly by the property in question. Evidence of variances granted under similar circumstances need not be considered.

5. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of the adjacent property nor be detrimental to the public welfare.
6. Such proposed variance will not constitute a change, including a variation in use, of the Official Zoning Map.
7. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in question.

#### **B. Granting Variances:**

1. Variances shall be granted only in cases of exceptional conditions involving exceptional physical conditions of the land whereby strict application of such provisions or requirements would result in practical difficulty and unnecessary hardship that would deprive the owner of the reasonable use of the land and buildings involved.
2. The BZA shall make a finding that the reasons set forth in the application are valid and justify granting said variance.
3. In granting any variance, the BZA may prescribe appropriate conditions and safeguards to allow for conformity with this Zoning Code. Violations of such conditions and safeguards, when such are made part of the terms under which a variance is granted, shall be punishable under Chapter 3, Section 3.3 within this Zoning Code.
  - a. If a variance is not acted upon within one (1) year, the variance permit shall expire.

#### **SECTION 7.5 – BZA PUBLIC HEARING/ RULING**

The Board of Zoning Appeals shall schedule a public hearing within thirty days upon receipt of said application. Ten (10) days prior to the scheduled hearing, the BZA shall provide notice containing the time, date, location and purpose of the public hearing in at least one newspaper of general circulation within the Village. Additionally, written notice of said hearing shall be mailed by first-class mail to property owners abutting or within two hundred (200) feet of said property in question at least ten (10) days prior to the public hearing and such notice shall contain the time, date, location and purpose of said hearing.

Within thirty (30) days after the public hearing, the BZA shall:

1. Approve the variance or conditional use, with findings in writing, that the reasons set forth in the application justify the granting of the variance that will make possible a reasonable use of the land, building, or structure, or

- that the approval of a conditional use will not adversely affect the neighborhood in which the conditional use is to be located; or
2. Approve the variance or the conditional use with supplemental conditions and safeguards in conformity with this Zoning Code. Violations of such conditions and safeguards, when such are made part of their terms under which a conditional use or variance is granted, shall be punishable under Chapter 3 Section 3.3 within this Zoning Code; or
  3. Deny the application for the variance or the conditional use with reasons in writing.

The BZA shall transmit a written copy of the decision setting forth the justifications for its decision therein to the Enforcing Officer who shall forward such copy to the applicant either in-person or by first-class mail.

The decision of the BZA shall not become final until the expiration of five (5) days from the date of entry of such order unless the BZA finds that the immediate effect of such order is necessary for the preservation of property or personal rights and shall so certify on the record.

After action is taken by the BZA, the applicant, or other party adversely affected by the action, may seek relief through the Court of Common Pleas. Such appeal must be filed within thirty (30) days from the date of the action by the BZA. A copy of the notice of appeal shall be served on the Secretary of the BZA by the aggrieved party within seven (7) days from the date of filing of the appeal.

**PAGE LEFT  
INTENTIONALLY BLANK**