

CHAPTER 1111
Board of Zoning Appeals

1111.01	Organization and procedures.	1111.06	Variances.
1111.02	Applications and appeals.	1111.07	Conditional uses. (Repealed)
1111.03	Hearings.	1111.08	Performance requirements.
1111.04	Decisions of the Board.	1111.09	Interpretation of district
1111.05	Powers and duties.		map.

CROSS REFERENCES

Appeals from zoning decisions - see Ohio R.C. 713.11; Ch. 2506

1111.01 ORGANIZATION AND PROCEDURES.

(a) Appointment. There is established a Board of Zoning Appeals which shall consist of seven electors appointed by Council. Council, by a majority vote of its members, shall choose a successor to fill any vacancy. The seven electors shall serve for five-year terms beginning on January 1. Each member shall serve until his successor is appointed and qualified. Vacancies shall be filled by Council and shall be for the respective unexpired term. The members of the Board may receive such compensation as Council provides.

(b) Hearings and Rules. The hearings of the Board shall be public. However, the Board may go into executive session for discussion but not for vote on any case before it. The Board shall organize annually and elect a President, Vice-President and Secretary. The Board shall adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of this Zoning Code. The Board shall hear any owner of property adjacent to the lot for which the granting of any zoning permit is pending, and shall also hear any other parties having substantial interest as determined by the Board.

(c) Minutes and Records. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other officials' council and shall be a public record.

(d) Witnesses and Oaths. The Board shall have the power to subpoena witnesses, administer oaths and punish for contempt, and may require the production of documents, under such regulations as it may establish.

(e) Department Assistance. The Board may call upon the various departments of the City for assistance in the performance of its duties, and it shall be the duty of such departments to render such assistance to the Board as may reasonably be required.
(1980 Code 150.120)

1111.02 APPLICATIONS AND APPEALS.

(a) Applications. An application, in cases in which the Board of Zoning Appeals has original jurisdiction under the provisions of this Zoning Code, may be made by any person aggrieved, including a tenant, or by a governmental officer, department, board or bureau. Such application shall be filed with the Zoning Inspector who shall transmit it to the Board. A fee shall be paid to the Zoning Inspector at the time notice of appeal is filed, which the officer shall forthwith pay over to the Finance Director to the credit of the General Revenue Fund. Refer to Section 1109.07 for application fees. The application fee for an administrative appeal shall be refunded to the applicant upon granting of said appeal by the Board of Zoning Appeals.
(Ord. 01-77. Passed 12-17-01.)

(b) Appeals.

- (1) An appeal to the Board may be taken by any person aggrieved or by an officer of the City affected by any decision of the Zoning Inspector. Such appeal shall be taken within twenty days after the decision, by filing with the Zoning Inspector and with the Board a notice of appeal specifying the grounds thereof. The Zoning Inspector shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- (2) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Inspector shall certify to the Board after the notice of appeal has been filed with it that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of equity, after notice to the officer from whom the appeal is taken and on due cause shown.
- (3) The Board may, in conformity with the provisions of this Zoning Code, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end, shall have all powers of the Zoning Inspector from whom the appeal is taken.
(1980 Code 150.121)

1111.03 HEARINGS.

(a) The Board of Zoning Appeals shall fix a reasonable time for the hearing of an appeal, give at least ten days' public notice thereof in a newspaper of general circulation in the City and at least ten days' notice to parties having proprietary interest in land within 200 feet, and decide upon the appeal within a reasonable time after it is submitted. Each application or notice of appeal shall be accompanied by the fee hereinafter specified. At this hearing, any party may appear in person or by attorney.

(b) The hearings of the Board shall be public. However, the Board may go into executive session for discussion but not vote on any case before it.

(c) Upon the day for hearing any application or appeal, the Board may adjourn the hearing in order to permit the obtaining of additional information or to cause such further notice as it deems proper to be served upon such other property owners as it decides may be substantially interested in the application or appeal. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the time of resumption of the hearing unless the Board so decides.
(1980 Code 150.122)

1111.04 DECISIONS OF THE BOARD.

(a) The Board of Zoning Appeals shall decide all applications and appeals within thirty days after the final hearing thereon.

(b) A certified copy of the Board's decision shall be transmitted to all parties in interest. The decision shall be binding upon the Zoning Inspector and observed by him, and he shall incorporate the terms and conditions of the decision in the permit to the applicant or appellant, whenever a permit is authorized by the Board.

(c) A decision of the Board shall not become final until the expiration of five days from the date the decision is made, unless the Board finds the immediate validity of decision is necessary for the preservation of property or personal rights and shall so certify on the record.

(d) The Board may reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and, to that end, shall have all powers of the Zoning Inspector from whom the appeal is taken. Any party adversely affected by a decision of the Board may appeal to the Court of Common Pleas of the county, on the ground that the decision was unreasonable or unlawful.
(1980 Code 150.123)

1111.05 POWERS AND DUTIES.

(a) The Board of Zoning Appeals shall have the power, and it shall be its duty, to hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the Zoning Inspector in the enforcement of this Zoning Code or any amendments thereto.

(b) In hearing and deciding appeals, the Board shall have the power to grant an exception in the following instances:

- (1) Permit the extension of a district where the boundary line of a district divides a lot or tract held in a single ownership at the time of the passage of this Zoning Code.
- (2) Interpret provisions of this Zoning Code in such a way as to carry out the intent and purpose of the plan, as shown upon the map fixing the several districts, accompanying and made a part of this Zoning Code, where the street layout actually on the ground varies from the street layout as shown on the map.
- (3) Permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God or the public enemy, to the extent of more than sixty percent (60%) of its fair market value where the Board finds some compelling necessity requiring a continuance of the nonconforming use, and the primary purpose of continuing the nonconforming use is not to continue a monopoly.
- (4) Waive or reduce the parking and loading requirements in any of the districts whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities, or where such regulations would impose an unreasonable hardship on the use of the lot, as contrasted with merely granting an advantage or a convenience.
- (5) Permit land within 300 feet of a multiple dwelling to be improved for the parking spaces required in connection with a multiple dwelling, but only when there is positive assurance that such land shall be used for such purpose during the existence of the multiple dwelling.
- (6) Determine whether an industry should be permitted within the "M-1" or "M-2" Industrial District because of the methods by which it would be operated and because of its effect upon uses within surrounding zoning districts.
- (7) The substitution for a nonconforming use existing at the time of enactment of this Zoning Code, of another nonconforming use, if no structural alterations except those required by law or ordinance are made. However, in an "R" District, no change shall be authorized by the Board to any use which is not a permitted or conditional use in any "R" District, and in a "B" District no change shall be authorized to any use which is not a permitted or conditional use in any "B" District.

- (8) Nonconforming mobile home communities can be expended by increasing the number of trailers by not more than twenty percent (20%) over their size at the date of the passage of this Zoning Code.
- (9) Temporary structures and uses. The temporary use of a structure or premises in any district for a purpose or use that does not conform to the regulations prescribed elsewhere in this Zoning Code for the district in which it is located, provided that such use is of a temporary nature and does not involve the erection of a substantial structure. A zoning certificate for such use shall be granted in the form of a temporary and revocable permit, for not more than a twelve-month period, subject to such conditions as shall safeguard the public health, safety, convenience and general welfare.

(c) The Board of Zoning Appeals shall have the power, and it shall be its duty, to hear and decide applications for the removal of abandoned signs as provided in Section 1191.31. (Ord. 98-31. Passed 8-10-98.)

1111.06 VARIANCES.

(a) The Board of Zoning Appeals shall have the power to hear and decide appeals and authorize such variances from the provisions or requirements of this Zoning Code as shall not be contrary to the public interest. In authorizing a variance, the Board may attach conditions and require such guarantee or bond as it may deem necessary to assure compliance with the objectives of this Zoning Code. On appeal where there is unnecessary hardship, the Board may grant a variance in the application of the provisions of this Zoning Code only if all of the following finds are made:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, shallowness, lot size or shape, or exceptional topographical or other physical conditions generally created by the provisions of this chapter in the neighborhood or district in which the property is located;
- (2) That because of 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) That such unnecessary hardship has not been created by the appellant;
- (4) That the variance, if authorized, shall 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 adjacent property, nor be detrimental to the public welfare; and
- (5) That the variance, if authorized, shall represent the minimum variance that will afford relief and shall represent the least modification possible of the regulation in issue.

(b) The Board shall have the authority to grant an extension or permit completion of a building devoted to a nonconforming use on a lot occupied by the building, or on an adjoining lot, provided that the lot was under the same ownership as the lot in question on the date the building became nonconforming, and where the extension is necessary and incidental to the existing use of the building. However, the floor areas of the extension shall not exceed 100% of the floor area of the existing building or buildings devoted to a nonconforming use, and the extension or extensions shall be undertaken within five years of the date when the use of the building became nonconforming. (1980 Code 150.125)

(c) To grant variances from the provisions of Section 1133.04 as the Board of Appeals determines not to be contrary to the public interest.

(d) When granting a variance, the Board may impose such conditions as it deems necessary including but not limited to those provisions set forth in Section 1111.07 for the granting of a conditional use. The Board may deny any variance.

(e) Prior the Board hearing and deciding any matter concerning a variance, it shall hold a public hearing as provided for in Section 1111.03.
(Ord. 93-41. Passed 10-4-93.)

1111.07 CONDITIONAL USES.

(EDITOR'S NOTE: Former Section 1111.07 was repealed by Ordinance 02-44, passed August 26, 2002. See Section 1123.02 "Conditional Uses".)

1111.08 PERFORMANCE REQUIREMENTS.

(a) The Board of Zoning Appeals shall have the power to authorize issuance of a zoning certificate for uses that are subject to performance requirements as set forth in this Zoning Code.

(b) The application for a zoning certificate for a use subject to performance requirements shall be accompanied by a plan of the proposed construction or development, a description of the proposed machinery, processes and products, and specifications for the mechanisms and techniques to be used in meeting the performance requirements.

(c) The Board may refer the application to one or more expert consultants qualified to advise as to whether a proposed use shall conform to the performance requirements. The costs of such services shall be borne by the applicant, and a copy of any reports shall be furnished the applicant.
(1980 Code 150.127)

1111.09 INTERPRETATION OF DISTRICT MAP.

Where the street or lot layout actually on the ground, or as recorded, differs from the street and lot lines as shown on the zoning map, the Board of Zoning Appeals, after notice to the owners of the property and after public hearing, shall interpret the map in such a way as to carry out the intent and purpose of this Zoning Code. In case of any questions as to the location of any boundary line between zoning districts, a request for interpretation of the zoning district map may be made to the Board and a determination shall be made by the Board.
(1980 Code 150.128)