

CHAPTER 1105
Board of Appeals

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CROSS REFERENCES

- Open meetings - see Ohio R.C. 121.22
- Notice of public meetings - see ADM. Ch. 105
- Zoning Ordinance administration, enforcement and penalty - see P. & Z. Ch. 1103
- Authority to interpret district boundaries - see P. & Z. 1113.06
- Special uses - see P. & Z. Ch. 1153
- Off-street parking and loading - see P. & Z. Ch. 1157, 1159
- Nonconforming uses and structures - see P. & Z. Ch. 1163

1105.01 ESTABLISHMENT.

A Board of Appeals is hereby established which shall consist of five members to be appointed by Council. Initially, two members shall be appointed for not more than one year, two for not more than two years and one for not more than three years. Every succeeding term shall run for three years, and all terms shall be arranged to expire on December 31. Vacancies shall be filled by resolution of Council for the unexpired term of the member affected. (Ord. 35-68. Passed 7-15-68.)

1105.02 PROCEEDINGS.

(a) The Board of Appeals shall adopt rules necessary to the conduct of its affairs, and in keeping with the provisions of this Zoning Ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

(b) 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 official actions, all of which shall be a public record and be filed in the office of the Board. Every decision of the Board shall be based upon

a finding of fact based on sworn testimony, which finding of fact shall be reduced to writing and preserved among its records.
(Ord. 35-68. Passed 7-15-68.)

1105.03 PUBLIC HEARING; NOTICE.

The Board shall hold a public hearing on all proposed actions including administrative appeals, proposals for variances, exceptions and industrial uses. Notice shall be given at least fifteen days in advance of the public hearing in a newspaper of general circulation in the City. Any party may appear in person at the public hearing, or by agent or attorney. The owners of property within, contiguous to and directly across the street from the parcel or parcels which are the subject matter of any proposed action, and also the persons proposing or requesting such action, shall be notified of such public hearing in writing by ordinary first class mail sent not less than twelve days prior to such hearing. The secretary of the Board shall, prior to the public hearing, certify by writing filed with the Board that such notice has been timely given.
(Ord. 10-86. Passed 1-20-86.)

1105.04 REQUIRED VOTE FOR ACTION.

The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, interpretation or decision of the Zoning Administrator, or to decide in favor of an applicant on any matter upon which the Board is required to pass under this Zoning Ordinance, including requests for variances, exceptions and industrial uses.
(Ord. 35-68. Passed 7-15-68.)

1105.05 AUTHORITY TO IMPOSE CONDITIONS.

(a) In granting a permit under any of the powers conferred upon the Board, the Board may stipulate the manner in which an approved variance, exception, industrial use, administrative ruling, etc. shall be carried out, or may require other improvements, safeguards and conditions for the protection of the health, safety and welfare of owners and occupants of surrounding lots or the public. Specifically, the Board in such cases may attach conditions dealing with the following:

- (1) Paving, shrubbery, screening, fences or walls.
- (2) Control or elimination of smoke, dust, vibration, gas, noise or odor.
- (3) Hours of operation.
- (4) Location of exits.
- (5) Cleaning and painting.
- (6) Elimination of nonconforming uses of land or nonconforming signs.
- (7) Direction and intensity of outdoor illumination.
- (8) Off-street parking and loading.
- (9) The duration of approval of a variance or exception, after which such approval shall expire.

(b) Violations of conditions imposed by the Board in conjunction with approval of an administrative appeal, variance, exception or industrial use shall be deemed a violation of this Zoning Ordinance and punishable under Section 1103.99.
(Ord. 35-68. Passed 7-15-68.)

1105.06 ADMINISTRATIVE REVIEW.

(a) Appeals. The Board shall hear and decide appeals where it is alleged there is error in any administrative order, requirement, interpretation or decision made by the Zoning Administrator in the administration and enforcement of this Zoning Ordinance. Appeals to the Board may be taken by any person aggrieved or by an officer or bureau of the governing body of the City affected by any decision of the Zoning Administrator. Such appeals shall be taken within a reasonable time, not to exceed sixty days or such lesser period as may be provided by the rules of the Board, by filing with the Zoning Administrator and with the Board a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.

(b) Decision. In exercising the above mentioned powers, the Board may, so long as such action is in conformity with the terms of this Zoning Ordinance, and after the required public hearing is held, reverse or affirm, wholly or partly, or may modify the administrative order, requirement, interpretation or decision appealed from and may make such administrative order, requirement, interpretation or decision as ought to be made, and to that end shall have all the powers of the Zoning Administrator from whom the appeal is taken.

(c) Stay of Proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certifies to the Board, after the notice of appeal is filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and 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 administrative official from whom the appeal is taken, and on due cause shown.
(Ord. 35-68. Passed 7-15-68.)

1105.07 VARIANCES.

(a) The Board may authorize, upon appeal or written application, such variance from the terms of this Zoning Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Zoning Ordinance would result in unnecessary hardship. For the purposes of this Zoning Ordinance a "variance" shall be defined as a relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Zoning Ordinance would result in unnecessary and undue hardship. As used in this Zoning Ordinance, a variance is authorized only for height, area and size of structure or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district, or adjoining zoning districts.

(b) A variance from the terms of this Zoning Ordinance shall not be granted by the Board unless the required public hearing is held, and unless and until all of the following findings are made by the Board:

- (1) 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) Literal interpretation of the provisions of this Zoning Ordinance would deprive the applicant of rights commonly enjoyed by owners of other properties in the same district under the terms of this Zoning Ordinance.
- (3) The special conditions and circumstances do not result from the actions of the applicant.
- (4) Granting the variance requested will not confer on the applicant any special privilege that is denied by this Zoning Ordinance to the owners of other lands, structures or buildings in the same district.
- (5) The variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
- (6) The granting of the variance will be in harmony with the general purpose and intent of this Zoning Ordinance, will not be injurious to the neighborhood, will not impair the adequate supply of light and air to adjacent property, will not unreasonably increase the congestion in public streets, will not unreasonably diminish property values within the surrounding area or otherwise be detrimental to the public interest.
(Ord. 35-68. Passed 7-15-68.)

1105.08 EXCEPTIONS.

The Board may hear and approve exceptions as specifically authorized herein, which are in harmony with the purposes and intent of this Zoning Ordinance, and which will not adversely affect the public interest. The following exceptions may be granted by the Board, after written application is submitted therefor, and after the required public hearing is held:

- (a) The location of a temporary building for commerce or industry in a residence district which is incidental to the residential development, such permit to be issued for a period of not more than one year.
- (b) The location of a temporary sign pertaining to the development of the land upon which the sign is located, provided it is not located in a required front yard, such permit to be issued for a period of not more than one year.
- (c) The enlargement, erection and use of a building or the use of premises in any location for a railroad or other public utility purposes not otherwise allowed by this Zoning Ordinance, which the Board deems reasonably necessary for the public convenience or welfare.

- (d) A reduction of the parking and loading requirements of this Zoning Ordinance whenever it has been clearly demonstrated that the provision of the full parking or loading facilities is unnecessary, or where such a requirement would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.
- (e) The placement of required parking spaces on a parcel separated from the parcel upon which the building or use served by such parking spaces is located, provided that the parking spaces are sufficiently close enough that they will serve the intended purpose and provided a written agreement assuring the retention of the parking spaces is properly executed and filed with the application for a zoning certificate.
- (f) The waiver of yards or setbacks and screening required for a parking area adjacent to a residential district, whenever a wall of approved height, design and material is erected.
- (g) Within any district, the placing of more than one main building on a lot, when all of the buildings are intended to be operated as a single enterprise and the lot and all portions of it are owned, leased or under option by a single party. In such cases, the yard requirements shall apply along all edges of the lot, but shall not be required for the internal arrangement of the buildings on the lot, provided that adequate light and air will reach all habitable rooms. Height, bulk and lot area per family shall apply as in the case of one main building located on a lot. An application for the placing of more than one main building on a lot shall be accompanied by a site plan. Proposals for placing more than one residential main building on a lot shall be referred to the Planning Commission for review of the site plan, and Planning Commission approval of the site plan shall be prerequisite to final approval by the Board.
- (h) The waiver of screening required in front of parking areas across a street from a residentially zoned parcel.
(Ord. 43-70. Passed 8-3-70.)

1105.09 INDUSTRIAL USES.

The Board shall hear and approve or disapprove proposals for location of industrial uses in the M-1 Light Industrial District when there is a question concerning the expected performance of the use, according to Section 1145.06(s) and also proposals for location of certain industrial uses in the M-2 Heavy Industrial District which, because of their performance, need special consideration according to Section 1147.07. Written application shall be made to the Board or referral shall be made by the Zoning Administrator, the public hearing shall be held, and the applicant or his agent shall appear before the Board with drawings of the proposed use and with other evidence, such as expert engineering testimony, to indicate the expected performance of the proposed use. In addition, the Board may accept written or oral testimony from other experts and from the staff of the Board of Health, the Service Director or other governmental or private agencies. In considering the proposed use, the Board shall evaluate the effect on adjacent neighborhoods, other businesses and industries from the possible emission of vibrations, noise, light, smoke, fumes, odor or dust.
(Ord. 35-68. Passed 7-15-68.)