

## CHAPTER 1242 BOARD OF ZONING APPEALS

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### 1242.01 **Creation, Composition and Term**

- A. The Board of Zoning Appeals, hereinafter designated as "The Board", is established under the Municipal Charter of the Village of Whitehouse for the purpose to hear and decide on appeals of a lawfully executed order by any administrative official and in the enforcement of this ordinance. The Board shall consider and make a determination on requests for variances from the terms and conditions of this Ordinance and consider appeals for exception for the use of land, buildings or other structures as applicable under the requirements and conditions of this Ordinance. The Board is an administrative agency which shall at all times comply with Ohio Revised Code 2506.
- B. The Board shall consist of five (5) electors of the Municipality not holding other municipal office or appointment. The members of the board shall be appointed by the Mayor, subject to the confirmation by the majority of the members of Council.
- C. The members of the Board shall serve for a term of four (4) years from the date of appointment or until their successors are appointed and qualified, except that of the first five (5) appointed, one (1) shall serve for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, and two (2) a term of four (4) years.

### 1242.02 **Organization, Meetings and Rules<sup>1</sup>**

- A. The Mayor shall establish the date, time and place for the first meeting each year, at which the Board shall organize under a chairman and secretary elected from among its members for a term of one (1) year.
- B. The Chairman shall call a meeting of the Board at least once a year or as otherwise required by provisions of the charter and at such times as its members may determine.
- C. The Board shall adopt its own rules and procedures which shall be in accordance and consistent with the Village Charter. There shall be a fixed place of the meeting. All meetings shall be open to the public and the meeting time and place shall be posted in accordance with the provisions of the Village Charter.

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<sup>1</sup> Amended Ord. 27-2006; Effective August 1, 2006

- D. The presence of the majority of Board Members shall be necessary to constitute a quorum. A meeting shall not be called to order or may not continue without a quorum.
- E. All members and officers of the Board may participate in any discussion and shall be a voting member of the Commission.
  - 1. The Board shall transact all business by an affirmative vote of no less than three members of the Board in attendance at the time of the vote.
  - 2. Should a meeting be called to order with only three (3) members present, the Chairperson will explain to the audience that a unanimous vote of those present will be required to transact business.
  - 3. A tie vote shall be treated as a defeat to the measure.
  - 4. The basis for decisions reached shall be specified by rendering findings of fact and conclusions of law.
  - 5. The Board shall keep a record of its proceedings showing the action of the Board and showing the vote of each member on each question considered.
- F. The Board shall consult with and request recommendations from the Planning Commission on all matters of concern to the comprehensive plan of the Village.
- G. The Board shall establish procedures for appeal to Council of any action by the Board.

#### 1242.03 **Powers and Jurisdiction<sup>2</sup>**

The Board of Zoning Appeals shall have the power and jurisdiction to conduct adjudicative hearings to consider and decide on the following matters:

- A. Appeals. On matters of zoning appeal where it is alleged there is an error of law in any order, requirement, decision or determination by the Zoning Inspector or other administrative official of the Village in the enforcement of this ordinance.
- B. Variances. To authorize, upon appeal, a variance from the practical difficulties of strict application of the terms of this Zoning Ordinance, where the landowner would be deprived of reasonable return or beneficial use of property by reason of exceptional narrowness, shallowness or shape or exceptional topographic conditions or other extraordinary situation or condition of a lot, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent of the Zoning Ordinance, and provided further that no variance shall be granted unless the Board specifically finds that all of the following conditions exist:

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<sup>2</sup> Amended Ord. 27-2006; Effective August 1, 2006

1. The special circumstances or conditions applying to the building or land in question are peculiar to such lot or property and do not apply generally to other land or buildings in the vicinity.
2. The granting of the application is necessary for the preservation and enjoyment of a substantial property right and not merely to serve as a convenience to the applicant.
3. The condition from which relief or a variance is sought did not result from action by the applicant.
4. The authorizing of the variance will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire or imperil the public safety or unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety, convenience or general welfare of the inhabitants of the Village.

C. Exceptions. To authorize, upon appeal, exceptions to these regulations in specific cases where there are practical difficulties or unnecessary hardships in carrying out the strict letter of this Ordinance, providing such exception is in harmony with the general purpose and intent of the Ordinance. Hardship shall be based on physical limitations of the land or structures and does not encompass financial considerations. The Board of Zoning Appeals may permit the following exceptions:

1. *Replacement of Nonconforming Buildings.* 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 fifty (50) percent 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.
2. *Modification of Parking and Loading Space Requirements.* Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit (a) the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building; or (b) the dual use of parking facilities (i.e. by stores during the day and theaters during the evening) provided there is no overlapping of use and the parking space requirements for each building or use are complied with during each period.
3. *Public Parking Areas Location.* Permit in the "S-1 or R" Districts, public parking areas or storage garages adjacent to any existing or proposed use in the multiple dwelling, commercial or industrial districts with a length not to exceed 150 feet. Such parking areas shall not cross streets or alleys.
4. *Use Impact Determinations.* Determine whether an industry should be permitted within an "M" Industrial District because of the methods by which it would be operated and because of its effect upon uses within surrounding zoning districts.

5. *Substitution of Nonconforming Uses.* The substitution of a nonconforming use existing at the time of enactment of this Ordinance of another nonconforming use, if no structural alterations except those required by law or ordinance are made; provided, however that in any "S-1 or R" District, no change shall be authorized by the Board to any use which is not a permitted or special use in any "S-1 or R" District, and in a "C" District no change shall be authorized to any use which is not a permitted or special use in any "C" District.
6. *Temporary Structures and Uses.* Permit the temporary use of a structure or premises for purpose of Commercial or Industrial development activity and the use of manufactured homes/construction trailers, or industrialized units (modulars) as temporary sales office, storage facilities etc., in any district for a purpose or use that does not conform to the regulations prescribed elsewhere in this Ordinance for the district in which it is located, provided that such use be of a temporary nature and does not involve the erection of a substantial structure. A zoning permit for such use shall be granted in the form of a temporary and revocable permit, for not more than a six (6) month period, subject to such conditions as will safeguard the public health, safety, convenience and general welfare. The above shall be considered temporary buildings for purpose of this section and shall not be used as a residence, during such development nor for the purpose of construction or reconstruction of a single family dwelling on a lot. The Board may renew this permit once for the above time period respectively.
7. *Extension of Off-street Parking Area into Residential District*
  - a) Permit an off-street parking area, serving a commercial or industrial use, within any residence district, after the request has been referred to the Village Planning Commission for study, which study shall include consideration of the following criteria:
    - 1) The use will not impair an adequate supply of light and air to adjacent property, or
    - 2) Increase the congestion in public streets, or
    - 3) Increase the danger of fire, or
    - 4) Impair the public safety, or
    - 5) Diminish or impair established property values within the surrounding area, or
    - 6) In any other respect impair the health, safety, convenience or general welfare of the inhabitants of the Village,

b) and provided the following conditions are met:

- 1) The parking area adjoins a commercial or industrial district provided such area does not extend more than one hundred fifty (150) feet from such commercial or industrial district. The parking area shall not be across a street from the commercial or industrial district, but may be across an alley, in which case the one hundred fifty (150) feet shall be measured from the centerline of the alley.
- 2) Ingress and egress to such parking area shall be subject to approval by the Board of Zoning Appeals.
- 3) No business involving the repair or service to a vehicle, or sale, or display thereof, shall be conducted from or upon such parking area.
- 4) No structure shall be erected or remain on any portion of the parking area.
- 5) No signs shall be erected on the parking area prior to review by the Planning Commission. No signs shall project beyond the property lines of the premises.
- 6) Parking areas shall be used for the parking of patrons' private passenger vehicles only and no charge shall be made for parking within such premises.
- 7) Yard requirements and improvements shall be in accordance with [Chapter 1258](#) (Off-street Parking and Loading).

D. Testimony -Fact Finding

1. To subpoena witnesses, administer oaths, take testimony, and require necessary production and presentation of documents.
2. To solicit expert testimony and advice on matters presented to the Board for consideration and/or appeal.

E. Interpretation of Ordinance. The Board of Zoning Appeals shall:

1. Interpret this Zoning Code in such a way as to carry out the intent and purpose of the Comprehensive Plan and purposes hereof;
2. Interpret the map fixing the several districts, accompanying and made a part of this Ordinance where the street layout actually on the ground varies from the street layout as shown on such map. and
3. Rule on the proper application or interpret the meaning of this Zoning Code if a dispute arises between administrative officials of the Village and any owner of property.

#### 1242.04 **Form and Scope of Decisions**

- A. In exercising the powers conferred upon it, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as should be made, and to that end shall have all the powers of the Zoning Inspector charged by this Zoning Ordinance with enforcement. The concurring affirmative vote of the majority of the Board Members appointed shall be necessary to reverse any order, requirement, decision or determination of the Zoning Inspector or to decide in favor of the applicant in any matter of which it has jurisdiction. The Board may, upon the affirmative vote of the majority of the Board Members appointed, reconsider any decision made and, upon such consideration render a decision by formal resolution. 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.
- B. In granting a permit under the powers conferred herein, the Board may stipulate the manner in which the variance or exception shall be carried out, or may require other improvements and safeguards 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:
1. Paving, shrubbery, ornamental or screening fence or wall;
  2. Control or elimination of smoke, dust, radiation, vibration, gas, noise or odor;
  3. Hours of operation;
  4. Location of exits or show windows;
  5. Cleaning and painting;
  6. Nonconforming uses of land or buildings.
  7. Direction and intensity of outdoor illumination;
  8. Amount and location of off-street parking, loading and signs;
  9. A period of time after which the permitted variation or exception shall expire.

#### 1242.05 **Conditions**

- A. Requirements for an Appealable Action. The following facts and information shall be included in the application as a condition for filing of an appeal.
1. There shall be an action or order of an official (citation of zoning violation, zoning permit denied, zoning permit revoked).
  2. Code, regulation or action being appealed; referencing specific chapter(s) and section(s) of the Zoning Code. This shall be specific as to the use of the land or buildings or the location or height buildings or structures on the parcel (dimensions, setback, height).
  3. Facts and information showing the basis of the appeal:
    - a) Factors or characteristics unique to that parcel or applicants use of the parcel.

- b) Circumstances not caused by applicant or previous owner or occupant.
  - c) Detriment/harm to applicant in relation to the use of the property or inability to derive use or value of the property.
  - d) Factors preventing strict compliance to zoning code requirement.
4. Remedy proposed:
- a) Must be measurable in relation to zoning code (i.e. location of building, use of land, etc.);
  - b) Must show any adverse effects to contiguous parcels or property and any effects contrary to the public interest.
- B. Granting of Variances. A variance is defined as the right to use or to build on land in a way prohibited by a strict application of an Ordinance. **USE VARIANCES ARE PROHIBITED AND SHALL NOT BE GRANTED BY THE BOARD.** There are two (2) types of variances:
- 1. *Use Variances*: A variance which allows a land owner to engage in a use that would otherwise violate the Zoning Ordinance. Examples of use variances include but are not limited to:
    - a) Industrial use in a commercial zone;
    - b) Commercial use in a residential district;
    - c) A multi-family dwelling in an area zoned for a single-family dwelling;
    - d) The extension of a nonconforming use.
  - 2. *Non Use or Area Variance*: a variance which would allow the owner to engage in a permitted use but is allowed to build improvements that would otherwise violate the Zoning Ordinance. Examples of a non-use or area variances include but are not limited to:
    - a) reduction of yard requirements
    - b) the placement of structures in a location on a lot otherwise prohibited by the ordinance
    - c) a permitted use or activity in a location on a lot otherwise prohibited by the ordinance
    - d) a waiver or reduction of supplemental regulations otherwise required for a permitted use or accessory use.
- C. Implementation of Variance. If the variance is not implemented within six (6) months of its approval, the variance is null and void.

## 1242.06 Procedures

An application, in cases in which the Board has jurisdiction under the provisions of this Ordinance, may be taken by any person aggrieved, including a tenant, or by a Village, official, or its representative, department, board, or commission.

### A. Application

1. All applications shall be in writing using forms provided by the Village, signed by the owner of the property involved or his duly authorized agent or attorney, specifying the request and grounds thereof, and filed in the office of the Zoning Inspector.
2. An appeal from any action, refusal or ruling of the Zoning Inspector shall be filed within 30 days after such action or refusal or the announcement of such ruling. The Zoning Inspector shall forthwith transmit to the Board all the papers constituting the record upon which the action or ruling appealed from was taken.
3. If the Secretary of the Board receives from the Zoning Inspector the documentation associated with an appeal seven (7) or more days before the next regularly scheduled meeting of the Board, the Secretary shall place the appeal on the agenda for the next scheduled meeting of the Board. If the documentation is received with less than seven (7) days remaining before the next regularly scheduled meeting of the Board, the Secretary shall place the appeal on the agenda for the meeting of the Board scheduled after the next regularly scheduled meeting of the Board.

- B. Public Hearing and Notice. The Board shall fix a reasonable time for the hearing of the appeal, give due notice to the parties in interest, stating the time and place thereof. The Board shall make its findings and determination in writing within sixty (60) days from the date of the filing of the appeal or in the case of an application for an exception within sixty (60) days after receipt of the review or information requested from the Zoning Inspector. At the hearing any party may appear in person by agent or by attorney and shall be given the opportunity to be heard and request waiver of time limitations. A copy of such findings and determination shall be transmitted to the applicant within fourteen (14) days thereafter.

### C. Hearing of the Appeal

1. The Board of Zoning Appeals hearing any appeal shall proceed pursuant to the following:
  - a) Shall require a complete application as required under [Section 1242.06](#) (Procedure) the application shall be accompanied by necessary legal description of parcel, site drawings and graphics to explain the nature of the appeal;
  - b) Publish notice of public hearing;

- c) Upon its decision to seek information may solicit; seek a review, comment and recommendation from administrative officials, village solicitor, and other experts, and subpoena witnesses;
  - d) Require that the Secretary of the Board make an audible record of the hearing which may be transcribed upon request.
  - e) Provide the appellant or appellant's agent or attorney the opportunity to appear and present their position, argument and contentions to the order, action or rule/regulation;<sup>3</sup>
  - f) Require all testimony to be sworn under oath;
  - g) Provide for the examination of witnesses and presentation of evidence;
  - h) Allow cross-examination of witnesses;
  - i) Require placement into the record any such evidence denied by person or body appealed from;
  - j) Present conclusions of fact supporting the final order, adjudication or decision appealed from.
2. The 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 shall have been filed with it, that by reason of facts stated in the permit, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by 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.

D. Appeal to Village Council

- 1. Any final written ruling of the Board of Zoning Appeals pertaining to the granting or denial of a permit or any other ruling may be appealed to Village Council. The appellant resident or administrative officer, within ten (10) days from the issuance of a written ruling of the Board, may file a written appeal to the Clerk of Council and the Secretary of the Board requesting a hearing, stating the reasons for such appeal.<sup>4</sup>
- 2. Prior to the hearing, the Secretary of the Board will transmit to Council all papers and documents constituting the records which prompted the appeal to be filed. Council will review the documentation and may receive further evidence as deemed relevant.

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<sup>3</sup> Amended Ord. 27-2006; Effective August 1, 2006

<sup>4</sup> Amended Ord. 27-2006; Effective August 1, 2006

3. In all appeals to Council, the Council shall follow the same procedures for hearing an appeal as those required of the Board of Zoning Appeals for hearing appeals.
4. An affirmative vote of five (5) members of Council is required to overturn a final decision from the Board of Zoning Appeals.
2. A public record of all appeals, variances, and appeal for exception and their disposition shall be kept on file in the office of the Zoning Inspector.