

Board of Zoning Appeals

**Chapter
1106**



Section 1106-1 Organization and Procedures

- A. *Appointment.* The Board of Zoning Appeals shall consist of seven electors appointed by the City Council. Council, by a majority vote of its members, shall choose a successor to fill any vacancy. Each member appointed shall serve for a five-year term beginning in January, and may continue serving until reappointed or a successor is appointed. Vacancies shall be filled by a vote of Council and shall be for the respective member's unexpired term. The members of the Board may receive such compensation as Council provides.
- B. *Rules and Procedures.* The Board shall organize annually and elect a President and Vice-President. The Board shall, from time to time, adopt such rules and regulations as it may deem necessary to carry out its duties.
- C. *Minutes and Records.* Minutes of the Board's meetings and copies of all applications shall be kept by the City Clerk, which minutes shall indicate the vote of each member on each motion presented, or if absent or failing to vote, indicating such fact.
- D. *Witnesses and Oaths.* The Board shall have the power and is authorized to subpoena witnesses, administer oaths and may require the production of documents, under such regulations or procedures as it may establish or agree upon.
- 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 those departments to render assistance to the Board as may reasonably be required.

Section 1106-2 Jurisdiction

- A. *Authority.* The Board has the authority to hear and decide the following applications:
 - 1. Administrative Appeal. Applications to appeal an administrative decision issued by a city code enforcement officer finding the applicant's property is not compliant with one or more City codes; and
 - 2. Variances. Applications that seek relief from the strict enforcement of dimensional provisions of the zoning code, including by way of example, lot size, width, setbacks, parking requirements and height, applicable to the applicant's property; and
 - 3. Temporary Land Uses. Applications for the temporary use of a structure or premises in a manner not wholly consistent with the zoning district in which the parcel is located;
 - 4. Nonconformities. Applications for extension of nonconforming uses, change of nonconforming use to another nonconforming use, or extension or enlargement of a nonconforming structure; or
 - 5. Other. Matters as may otherwise be provided by the City's Codified Ordinances or other codes adopted by the City
- B. All applications shall be submitted and administered as outlined in this chapter. Application fees shall be paid in the amount established by the City Council. The application fee for an administrative appeal shall be refunded if the appeal is granted by the Board. If the appeal is granted in part and denied in part, one-half of the fee shall be refunded.
- C. Prior to the Board hearing and deciding any application requests, it shall hold a public hearing as required by this chapter.

- D. Only those applications that contain complete information shall be placed on a Board agenda for the next available meeting.

Section 1106-3 Administrative Appeal

- A. An appeal to the Board may be made by any person, or by any officer of the City, that is aggrieved by, or affected by, any decision of a code enforcement officer (hereafter, "code official"). The Administrative Appeal shall be made within 20 days after receipt of the code official's written notice, order or decision, by filing with the code official and with the Board, an application of appeal specifying the grounds thereof, on forms supplied by the City. The code official shall transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- B. Board consideration of an appeal shall be based on the record and materials included in the application. No new evidence may be introduced at the meeting.
- C. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the code official 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/her 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.
- D. The Board may, in conformity with the provisions of this Zoning Code, reverse or affirm, in whole or in part, or it may modify the order, requirement, decision or determination appealed from, and shall make such order, requirement, decision or determination based on record as in its opinion ought to be made in the premises, and to that end, shall have all powers of the code enforcement officer from whom the appeal is taken.

Section 1106-4 Variances

- A. The Board shall have the power to authorize variances from the provisions or requirements of this Zoning Code if in 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 code and any conditions of approval.
- B. The Board's power to grant variances from the dimensional provisions of the zoning code shall be in harmony with the intent and purposes of the code, as provided below.
1. Variance Standards. Variances from the terms of the code shall be granted only where the applicant shows that the strict application of a zoning requirement causes practical difficulties in the use of the property. The factors to be considered and weighed by the Board in determining whether a property owner has encountered practical difficulties in the use of the property include, but are not limited to:
 - a. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
 - b. Whether the variance is substantial;
 - c. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

- d. Whether the variance would adversely affect the delivery of governmental services such as water distribution, sanitary sewer collection, electric distribution, storm water collection, or refuse collection;
 - e. Whether the property owner purchased the property with knowledge of the zoning restriction;
 - f. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
 - g. Whether the existing conditions from which a variance is being sought were self-created; and
 - h. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
2. The Board shall determine, after weighing the factors described above and any other factors the Board deems relevant, whether the property owner has shown practical difficulties so inequitable as to justify granting a variance.

Section 1106-5 Nonconformities

- A. The Board of Zoning Appeals shall have the power to authorize extension of nonconforming uses, change of a nonconforming use to another nonconforming use, or extension or enlargement of a nonconforming structure.
- B. The following criteria shall apply when considering nonconformity applications:
1. The extension, change or enlargement will not be contrary to the public interest;
 2. The use will be in harmony with the spirit and purpose of these regulations and the Comprehensive Plan;
 3. There are unique circumstances existing on the property;
 4. The nonconformity was lawfully established.

Section 1106-7 Hearings

- A. The Board shall give notice of the time, place and purpose of the public hearing for applications by giving at least seven (7) days public notice thereof in a newspaper of general circulation in the City and, in addition, shall provide ten(10) days notice by first class mail to parties having proprietary interest in land within 200 feet of the property which is the subject of an application (except as provided in Section 1106-7 C for subsequent hearings). It is the intention of this section to provide, so far as possible, due notice to persons substantially interested in the application that such application is before the Board. All applicants shall provide the City with the names and address of all property owners within 200 feet of the subject property so those owners can be notified of the hearing.
- B. In addition, 14 days prior to a hearing date, the Board agenda, in the form published in the newspaper, shall be placed on the City's website and on the City's public bulletin board at City Hall.
- C. The hearings of the Board shall be open to the public. At the time of hearing, any party, person or entity with a vested interest in the application, may appear in person, or by a duly authorized representative or attorney. Anyone testifying before the Board must be sworn in. On the day of the hearing, the Board may adjourn the hearing in order to permit additional information to be obtained. Subsequent hearings on the same application, as assigned by case identification

number, do not require additional notice by first class mail to property owners within 200 feet.

Section 1106-7**Decision of Board**

- A. After disposing of an Application by a vote thereon, a record of action containing the Board's decision shall be transmitted by the City Clerk to the applicant. The decision shall be binding upon the City's code official and observed by him/her. The code official 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.
- B. A decision of the Board on an administrative appeal shall not be in effect and acted upon by the City until the expiration of 5 days from the date of the hearing, unless the Board finds the immediate validity of a decision is necessary for the preservation of property or personal rights and shall so certify on the record. Decisions by the Board on all other matters (not on appeal) are effective upon conclusion of the hearing.
- C. Any party adversely affected by a decision of the Board may appeal the decision in the manner and within the time frame as provided by Section 2506 of the Ohio Revised Code.