

### **1111.10 PROCEEDINGS OF THE BOARD OF ZONING APPEALS.**

The following provisions shall apply to the Board of Zoning Appeals:

- (a) Appeals to the Board of Zoning Appeals. An appeal to the Board of Zoning Appeals may be made by any person aggrieved (who, for the purposes of appeals brought pursuant to this section, shall be defined as the applicant, the owners of real property which is the subject of the appeal and the owners of real property within 300 feet, in any direction, of the boundaries of the real property which is the subject of any such appeal; or by an officer, department, board, or bureau of the City concerning any decision of the Zoning Administrator or Planning and Zoning Commission. Such appeal shall be made within 35 days after the decision, by filing with the Zoning Administrator a notice of appeal specifying the grounds thereof. On receipt thereof, the Zoning Administrator shall maintain all files constituting the record on which the action appealed.
- (b) Hearings. The Zoning Administrator shall fix a reasonable time for the hearing, give at least ten days public notice thereof, in a newspaper of general circulation in the area, post public hearing notice on the property, and decide the same within a reasonable time, provided that the date for said public hearing is satisfactory to the Board of Zoning Appeals and the applicant. Each appeal shall be accompanied by a payment determined by Council. It shall be the appellant's sole responsibility to do all legal notices and publication required by law. At the hearing, any party may appear in person or be represented by an agent or attorney.
- (c) Decisions of the Board of Zoning Appeals. The Board of Zoning Appeals shall decide all applications and appeals within 35 days after the close of the hearing thereon. Every appeal granted or denied must be accompanied by a written finding of fact based on testimony and evidence and specifying the reason for granting or denying the appeal. A certified copy of the Board of Zoning Appeals decision shall be transmitted to the appellant, and to the Zoning Administrator. Such decision shall be binding on the Zoning Administrator and observed by them, and they shall incorporate the terms and conditions of the same in the permit to the applicant or appellant, whenever a permit is authorized by the Board of Zoning Appeals. A certified copy of the Board of Zoning Appeal's decision as well as a copy of the minutes of the Board of Zoning Appeals meeting shall be filed immediately in the City Building and shall be a public record.
- (d) Stay of Proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Zoning Appeals, after notice of appeal shall have been filed with the Zoning Administrator, that by reasons of acts stated in the certificate, a stay would, in the Zoning Administrator's opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Zoning Appeals or by the Common Pleas Court on application, on notice to the Zoning Administrator or by judicial proceedings, and on due cause shown.
- (e) Appeal from Decisions of the Board of Zoning Appeals. There shall be no further appeals to a City body to the decisions of the Board of Zoning Appeals.

(Ord. 2007-1. Passed 1-9-07.)

### **1111.11 DUTIES OF THE ZONING ADMINISTRATOR AND THE BOARD OF ZONING APPEALS.**

It is the intent of this Zoning Code that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board of Zoning Appeals only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of the Board of Zoning Appeals shall be to the courts as provided by law.

### **1111.12 VARIANCES.**

(a) The Board of Zoning Appeals shall have the power to authorize upon appeal in specific cases, filed as hereinbefore provided, such variances from the terms, provisions or requirements of this Zoning Code as will not be contrary to the public interest provided, however, that such variances shall be granted only in such cases where, owing to special and unusual conditions pertaining to a specific piece of property as described below, the literal enforcement of the provisions or requirements of this chapter would result in practical difficulty or undue hardship, so that the spirit of the chapter shall be upheld, public safety and welfare secured and substantial justice done. Variances shall not be granted for uses not permitted in the zoning district applicable to the property.

Conditions prevailing. Where there are exceptional or extraordinary circumstances or conditions, the literal enforcement of the requirements of this chapter would involve practical difficulty or would cause unnecessary hardship, unnecessary to carry out the spirit and purpose of this chapter, the Board of Zoning Appeals shall have power to relieve such hardship. In authorizing a variance, the Board of Zoning Appeals may attach thereto such conditions regarding the location, character, and other features of the proposed structure or use it as it may deem necessary in the interest of the furtherance of the purpose of the chapter and in the public interest. In authorizing a variance, with attached conditions, the Board of Zoning Appeals shall require such evidence and guarantee or bond as it may deem to be necessary, to enforce compliance with the conditions attached.

Findings of the Board of Zoning Appeals. No such variance of the provisions or requirements of this chapter shall be authorized by the Board of Zoning Appeals unless the Board of Zoning Appeals finds that all of the following facts and conditions exist:

Exceptional Circumstances. Where, by reason of the exceptional narrowness, shallowness, or unusual shape of a specific piece of property on the effective date of this chapter, or by reason of exceptional topographic conditions, or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjoining the piece of property in question, there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property, that do not apply generally to other properties or classes of uses on the same zoning district.

Preservation of Property Rights. That such variance is necessary for the preservation and enjoyment of substantial property rights which are possessed by other properties in the same zoning district and in the same vicinity.

Absence of Detriment. That the authorizing of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purposes of this chapter or the public interest.

Not of General Nature. That the condition or situation of the subject property, or the intended use of the property, for which variance is sought, is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulations for such conditions or situation.

(b) Application for Variance. A variance from the terms of this Zoning Code shall not be granted by the Board of Zoning Appeals unless and until a written application for a variance is submitted to the Zoning Administrator. The application shall be signed by the owner or applicant attesting to the truth and exactness of all information supplied by the application. At a minimum, the application shall contain the following information:

(1) Name, address and telephone number of applicant;

A survey by a person licensed in the State of Ohio to perform land surveys;

(3) Description of the nature of variance requested;

A statement demonstrating that the requested variance conforms to the standards set forth in subsection (a) (1) hereof; and

(5) A fee as established by Council.

(c) Supplementary Conditions and Safeguards. In granting any appeal or variance the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this Zoning Code. Violation of such conditions and safeguards when made a part of the terms under which the appeal or variance is granted shall be deemed a violation of this code and punishable under Section [1113.01](#). Under no circumstances shall the Board of Zoning Appeals grant an appeal or variance to allow a use not permissible under the terms of this Zoning Code in the district involved, or any use prohibited by the terms of this Code in such district.

(d) Public Hearing by the Board of Zoning Appeals. The Zoning Administrator shall establish a date for a public hearing within 30 days after the receipt of an application for a variance or a notice of appeal; provided that the date for said public hearing is satisfactory to the Board of Zoning Appeals and the applicant. The hearing on the appeal or variance shall be held within 40 days of receipt of application for the variance or the notice of appeal.

(e) Notice of Public Hearing in Newspaper. Before holding the public hearing required in subsection (d) hereof notice of such hearing shall be given by publication in a newspaper of general circulation in the City not less than ten days prior to the hearing. The notice shall set forth the time and place of the public hearing and the nature of the proposed appeal or variance. The initiating party shall provide at its cost the publication of the notice and shall, on or before the date of the hearings, provide an affidavit confirming compliance with this section, which affidavit shall have attached thereto a "proof of publication" form provided by the publishing newspaper.

(f) Notification of Board of Zoning Appeals Hearing. Written notice of the public hearing provided by subsection (d) hereof shall be provided to the owners of the real property within the area covered by the application for the variance and to the owners within 300 feet in any direction of the boundaries of the area covered by the application, within the City of Loveland. For the purposes of this section, the word "owners" shall mean those persons appearing on the county's current tax duplicate as the owners of fee simple title to the real properties. Such written notice shall be provided at least ten days prior to the date of the hearing by hand delivery, or by posting it by prepaid ordinary U.S. mail at the address listed upon the tax duplicate for each such owner. The written notice shall contain the same information as required of notices published in newspapers as specified in subsection (e) hereof. When the proposed variance has been initiated by the City, the City shall provide at its cost the hand or postal delivery provided herein above. When the proposed variance has been initiated by a party other than the City, the initiating party shall provide at its cost the hand or postal delivery provided herein above and shall file with the Board of Zoning Appeals on or before the date of the hearing an affidavit confirming compliance with the provisions of this section. The failure to hand deliver or mail the notice provided by this section shall not, however, invalidate any action of the Board of Zoning Appeals on the variance application.

(g) Action by Board of Zoning Appeals. Within 35 days after the public hearing required in subsection (d) hereof the Board of Zoning Appeals shall either approve, approve with supplementary conditions as specified in subsection (c) hereof, or disapprove the request for appeal or variance pursuant to the provision of the Charter. The Board of Zoning Appeals Hearing shall not be continued beyond 35 days. The Board of Zoning Appeals shall further make a finding that the reasons set forth in the application justify the granting of the appeal or variance and by demonstrating that the decision will make possible a reasonable use of the land, building

or structure. If the application is disapproved by the Board of Zoning Appeals, the applicant may seek relief through the Court of Common Pleas.

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