

BOARD OF ZONING APPEALS
CITY OF FINDLAY, OHIO
RULES OF PROCEDURE

The Board of Zoning Appeals is established under Chapter 1127 of the Findlay Code of Ordinances, a copy of which Chapter is attached hereto. Section 1127.02 requires that the Board adopt rules of procedure. Accordingly, these Rules of Procedure are hereby adopted by the Board, and they shall become effective on October 10, 2002.

SECTION I. APPLICATIONS TO THE BOARD

Chapter 1127 assigns the Board of Zoning Appeals responsibility to consider appeals from decisions of the Zoning Office, requests for variances from literal standards of the Zoning Code, and requests for interpretations of the Zoning Map. Applications for consideration by the Board shall be filed not less than twenty (20) days prior to the regular meeting at which an Applicant's request is to be heard. Such applications shall be filed with the Development Services Office on forms provided by that office. Applications shall include all drawings, narrative statements and other information required on the forms, and failure to provide complete materials may be deemed as grounds for tabling consideration of a request until the material has been submitted.

Application forms shall be accompanied by eight (8) copies of any required drawings. The Development Services Office shall circulate copies of all Applications and the upcoming Agenda to the Board Members within five (5) working days after the deadline for submission. Items appearing on the Agenda shall be placed in the order in which they were received by the Development Services Office.

SECTION II. PUBLIC NOTICE

Notice of Applications to be considered by the Board shall be published in a newspaper of general circulation in the City of Findlay at least fourteen (14) days prior to the meeting at which the matters are to be heard.

In the case of Applications for Variance, written notice of such requests shall be mailed to the owners of all property abutting and/or within three hundred (300) feet of the subject site at least fourteen (14) days prior to the meeting at which the variance is to be considered. In the case of Appeals, notice of the hearing of such appeal shall be mailed to all parties having interest in the matter at least fourteen (14) days prior to such hearing.

Subsequent to publication of the meeting notice, copies of all Applications and attendant supporting materials shall be kept available for public inspection in the Development Services Office during regular business hours.

SECTION III. MEETING PROCEDURES

The Board of Zoning Appeals is by nature a quasi-judicial body, and regular meetings shall be conducted in a relatively formal fashion. The Board has the authority to compel testimony, but will only do so upon a majority vote of the Board membership. Persons appearing before the Board shall be administered an oath promising to provide truthful testimony, and individuals may appear in person or be represented by an authorized agent.

The Board will hear all comments related to an issue in question, but if there are numerous individuals all wishing to express a similar position, the Chairman may designate a representative to speak on behalf of the group. Generally, the Board will limit presentations to no more than five (5) minutes, unless the Chairperson consents to an extension of that time. All persons appearing before the Board shall direct their comments to the Board, and not to other persons present.

Consideration of Agenda items by the Board shall occur in the following order:

1. Presentation of background information by a representative of the Development Services Office.
2. Presentation by the Application in support of the request.
3. Comments from audience members in support of the request.
4. Comments from audience members in opposition to the request.
5. Presentation of recommendation from the Development Services Office.
6. Questions from Board members to anyone having offered testimony.
7. Decision by the Board to approve, disapprove or table the request for further study.

The decision of the Board shall be entered on a Notice of Decision form provided by the Zoning Office, signed and dated by the Chairman, and presented to the applicant. If a request is approved conditionally, the conditions shall be listed on the form.

An application which has been tabled, shall be terminated at the end of the calendar year or after a period of two months, whichever occurs later.

SECTION IV. MINUTES

The Zoning Office shall be responsible for recording Minutes of Board proceedings, and shall record the vote of each member regarding matters before the Board. Minutes of meeting shall be mailed to each member within ten (10) working days after such sessions. Additions or corrections may be offered at the succeeding meeting, after which the Minutes shall be approved and signed by the Chairman and Secretary.

An applicant wishing to have a verbatim record of Board proceedings may engage at his/her own expense, a court reporter to make a complete and accurate transcript or a meeting or part thereof.

BOARD OF ZONING APPEALS

1127.01 CREATION AND MEMBERSHIP

A Board of Zoning Appeals, hereinafter referred to as the "Board", shall be established. The Board shall consist of five members, all of whom shall be electors of the City, and who shall be appointed as follows: Five members of the Board shall be appointed by the Mayor, with the consent and approval of City Council. These members of the Board shall hold office for terms of four years, and their terms shall be staggered so that not more than two shall expire in any one year. If a vacancy occurs by resignation or otherwise, the Mayor shall appoint a new member for the unexpired term, with the consent of City Council.

All members shall serve until their successors are appointed and qualified. The Mayor shall have the power to remove any of his/her appointees to the Board for cause, after public hearing before the City Council.

(Ord. 1993-103. Passed 12-7-93.)

1127.02 ORGANIZATION OF THE BOARD

- (a) The Board shall, within ten (10) days after appointment, meet and organize by electing a chairman, a vice-chairman, and a secretary from their membership. All meetings of the Board shall be held at the call of the chairman, or on the written request to the Chairman of two (2) members of the Board, and at such time and places as the Chairman may determine. The chairman, or in his absence, the vice-chairman, may administer oaths and require the attendance of witnesses. All meetings of the Board shall comply with requirements of State of Ohio open meeting laws.
- (b) The Board shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examination and other official actions. The Board shall adopt its own rules of procedure. Every order, requirement, decision or determination of the Board shall be filed in the office of the Service-Safety Director, and shall become a public record. In the performance of its duties, the board may incur such expenditures as shall be authorized by City Council. A majority of the members of the Board shall constitute a quorum; but no action of said Board shall be official unless such action be taken or authorized by a majority of the membership of the board. Each member of the Board shall serve without compensation.

(Ord. 1993-103. Passed 12-7-93.)

1127.03 JURISDICTION

The Board of Zoning Appeals shall have the following duties and responsibilities:

- (a) Appeal. The Board shall hear appeals from any order, requirement, decision, or determination made by the administrative official charged with the enforcement of the Zoning Code. Such appeal shall be taken within such time as shall be prescribed by the Board in its rules, and by filing with the Zoning Department a notice of appeal, specifying the grounds thereof. The Zoning Department shall transmit to the Board all facts constituting the record on which the action of appeal is taken. An appeal shall state all proceedings in furtherance of the action appealed from unless the zoning officer from whom the appeal is taken certifies to the Board, after the notice of appeal is filed with him/her, that by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. In such case no stay shall be had, unless a restraining order to that effect shall be issued by the Court of Common Pleas of Hancock County, Ohio, after due notice given to the zoning officer from whom the appeal is taken and for good cause shown. The Board shall fix a time for the hearing of an appeal and give not less than seven (7) days notice thereof to the parties, in accordance with its rules of procedure, and decide the same within a reasonable time. At the hearing, any party may appear in person, or by agent or attorney. The Board may reverse, affirm, or modify the order, requirement, decision, or determination as in its opinion shall seem just and fair, and to that end, the Board shall have all the powers of the officer from whom the appeal is taken.

Any person adversely affected by any order of the Board issued after hearing as provided above, may appeal from the order of the Board to the Court of Common Pleas. Any party desiring to appeal shall file a notice of appeal with the Board setting forth the order appealed from and grounds for appeal. A copy of such notice of appeal shall also be filed in the Court of Common Pleas by the party appealing. Such notice of appeal shall be filed within thirty (30) days after the filing of a decision of the Board in the office of the Service-Safety Director. Such appeal may be on questions of law or on questions of law and fact. The filing of a notice of appeal in the office of the Board shall state all proceedings appealed from unless the Court of Common Pleas fails to render a decision in the matter within ninety (90) days from the date the decision of the Board is filed in the office of the Service-Safety Director. The provisions of the Ohio Revised Code shall further govern all appeals under the provisions of this Section.

- (b) Variance. A variance is a modification of the literal provisions of this Zoning Code granted when strict enforcement of the Code would cause undue hardship owing to circumstances unique to the individual property on which the variance is granted. The crucial points of variance are:

(1) undue hardship, and

(2) unique circumstances applying to the property.

A variance is not justified unless both elements are present in the case. The Board shall be permitted to grant variances as above defined in specific cases whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive an owner of the reasonable use of the land or building involved. However, in review of a variance request, no nonconforming use of neighboring lands, structures or buildings in the same district and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance. Notice of Applications for Variance shall be provided to all abutting property owners and published in a newspaper of general circulation at least fourteen (14) days prior to the date of the meeting at which the variance request will be considered.

(1) Granting of Variance. No variance from the strict application of the standards of this Ordinance shall be granted by the Board of Appeals unless and until the applicant demonstrates to the Board's satisfaction all of the following:

A. Conditions and Circumstances: That 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.

B. Property Rights: That the literal interpretation of the provisions of this Ordinance would deprive the applicant of property rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.

(Ord. 1993-103. Passed 12-7-93.)

C. Applicant not disregarding code: That the special conditions and circumstances do not result from the actions of the applicant, his agent and/or contractor, to disregard or circumvent the code but are a result from applicant's good faith attempts to improve the property, neighborhood and community without substantially infringing on the language and intent of the code.

(Ord. 2000-54. Passed 7-18-00)

D. Harmony with Locality: That the variance requested shall not alter the essential character of the locality nor substantially or permanently impair the appropriate use or development of adjacent property.

(Ord. 1993-103. Passed 12-7-93.)

- E. Magnitude of Variance. Whether the variance is of a non-substantial nature.
- F. Alternatives. Whether the applicant's predicament feasibly can be obviated through some method other than a variance.
- G. Substantial Justice: Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

(Ord. 2000-14. Passed 3-7-00)

(2) Required Findings for Issuance of Variances:

- A. In requests for variances, the burden of all required proofs shall be on the Applicant. Prior to approving any requested variance, the Board of Appeals shall make a determination that the reasons set forth in the application are valid and do justify the granting of the variance. The Board shall also determine if the variance is the minimum variance necessary to make possible the reasonable use of the land, building or structure. The Board's Minutes shall include the basis on which the Board justifies the granting of any variance.
 - B. Under no circumstances shall the Board of Appeals grant a variance which will permit a use which is not permitted in the district in which the property is located.
- (3) Conditions. The Board of Zoning Appeals may prescribe appropriate conditions and safeguards as it may determine necessary to protect the value and utility of properties adjoining those involved in variance requests. Failure to adhere to such conditions and safeguards shall be a violation of this Ordinance. In prescribing conditions, the Board shall, to the greatest extent possible, attach only those conditions which are visible from a building's exterior, and are, therefore, enforceable by the Zoning Department.
- (4) Time limit. When a Variance from the strict application of the terms of this Code has been approved by the Board of Zoning Appeals, the Zoning Department may issue a zoning permit. If an Applicant fails to secure the zoning permit and complete construction within one (1) year of the date of approval of a variance, such variance shall expire. If it deems such measure to be appropriate in a specific case, the Board of Zoning Appeals shall have the authority to place a more restrictive time limit than the aforesaid one (1) year.

- (c) Zoning Map Interpretation. The Board shall also interpret the Zoning Map which constitutes a part of the Zoning Code. In the interpretation of such Zoning Map, the Board shall consider that district boundaries are intended to follow the center lines of existing streets, highways, alleys, or property lines, or extensions of same, or the banks of rivers, streams, creeks and open ditches, or section, half-section or quarter-section lines, unless definite conditions are otherwise indicated on the Zoning Map.

(Ord. 1993-103. Passed 12-7-93.)