

CHAPTER 1179
Appeals, Variances, and Conditional Use Permits

CROSS REFERENCES

Appeals from zoning decisions - see Ohio R.C. 713.11
Interpretation of zoning map - see P. & Z. 1139.03

1179.01 APPEALS.

Appeals to the Board of Zoning Appeals concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by any officer or agent of the legislative authority of the City affected by any decision of the Director of Zoning or his/her authorized representative. Such appeal shall be taken within thirty (30) days after the decision by filing with the Director of Zoning or his/her authorized representative and the Board of Zoning Appeals, a notice of appeal specifying the grounds upon which the appeal is being taken and which shall be accompanied by the required fee. The Director of Zoning or his/her authorized representative shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken.

A. Stay of Proceedings

An appeal stays all proceedings in furtherance of the action appealed unless the Director of Zoning or his/her authorized representative, by reason of facts stated in the application, finds that a stay would, in his or her 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 either by the Board of Zoning Appeals or a court of record.

1179.02 VARIANCES.

The Board of Zoning Appeals may authorize a variance from the terms of this Ordinance which shall not be contrary to the public interest and where owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. A variance shall not be granted unless the Board of Zoning Appeals makes a specific finding based directly on the particular evidence presented to it which supports conclusions that the standards and conditions imposed by this Section have been met by the applicant. No variance shall be granted which will alter the character and use of a zoning district or to correct an error of judgment in zoning laws.

A. Application Requirements

Except as otherwise permitted in this Ordinance, a variance from the terms of this Zoning Ordinance shall not be granted by the Board of Zoning Appeals unless and until a written application for a variance is submitted to the Director of Zoning or his/her authorized representative and the Board of Zoning Appeals. At a minimum, the application shall include:

1. Name, address, and telephone number of property owner.
2. Legal description and street address of property.
3. Description of nature of variance requested.

4. A list of all property owners and their addresses who are within, contiguous to, or directly across the street.
5. A narrative statement demonstrating that the requested variance conforms to the following standards:
 - a) 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) That a literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
 - c) That special conditions and circumstances do not result from the actions of the applicant.
 - d) That nothing herein contained shall be construed as authorizing the Board of Zoning Appeals to effect changes to the Zoning Map or to add to the permitted or conditional uses in any Zoning District.
 - e) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
 - f) That the variance is not for a use which is not allowed in the district in which the property is located.

B. Standards for variances

The Board of Zoning Appeals shall not grant a variance unless it shall, in each specific case, make specific findings of fact directly based upon the particular evidence presented to it, that supports conclusions that:

1. The strict application of the provisions of this ordinance from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
2. 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;
3. The involved special conditions and circumstances peculiar to the land, structure, or building 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 ordinance to other lands, structures, or buildings in the same district; and

5. The variance will not authorize or permit a use which is not allowed in the district in which the property is located. (Ord. 53-09. Passed 7-21-09.)

1179.03 PUBLIC HEARING BY THE BOARD OF ZONING APPEALS.

The Board of Zoning Appeals shall hold a public hearing within thirty-five (35) days after the receipt of an application for an appeal or variance from the Director of Zoning or his/her authorized representative or an applicant. At the public hearing, any party may appear in person or be represented by an attorney at law.

A. Notice of Public Hearing in Newspaper

Before holding the public hearing required in Section 1179.03, notice of such hearing shall be given in one (1) or more newspapers of general circulation in the City, at least fifteen (15) days prior to the date of said hearing. The notice shall set forth the time and place of the public hearing, and the nature of the proposed appeal or variance.

B. Notice to Parties of Interest

Prior to conducting the public hearing required in Section 1179.03, written notice of such hearing shall be mailed by the Secretary of the Board of Zoning Appeals (BZA) by first class mail at least ten (10) days before the day of the hearing to all owners of property within, contiguous to, and directly across the street from the subject property. The mailing list shall be supplied to the BZA by the property owners requesting the variance or appeal. The notice shall contain the same information as required of notices published in newspapers, as specified in Section 1179.03A. The applicant requesting a rezoning and/or a BZA variance request shall also be required to place a hearing sign on the subject property (refer to Section 1163.05(H) with dimensions and contents of the sign to be determined by the Director of Zoning. The cost of such sign shall be borne by the applicant.

C. Action by the Board of Zoning Appeals

1. The Board of Zoning Appeals may adjourn the hearing on its assigned date for the purpose of obtaining additional information, or to serve notice of the hearing upon other property owners with substantial interest in the case. If a hearing is adjourned, the Board of Zoning Appeals shall not be required to inform previously identified persons who have already been heard of the time of its resumption.
2. Within thirty-five (35) days after the public hearing required in Section 1179.03, the Board of Zoning Appeals shall either approve, approve with supplementary conditions as specified in Section 1179.03D., or disapprove the request for appeal or variance. All such decisions shall be supported by written findings of fact and conclusions of law.
3. In approving, or approving with supplementary conditions, the Board of Zoning Appeals shall further state in the findings of fact and conclusions of law that the reasons set forth in the application justify the granting of the variance that will make possible a reasonable use of the land, building, or structure. A copy of this decision shall be transmitted to the applicant and the Director of Zoning or his/her authorized representative.

Such finding shall be binding on all parties, and the Director of Zoning or his/her authorized representative shall incorporate its terms and conditions in the relevant permit.

4. Appeals from Board of Zoning Appeals decisions shall be made to the Court of Common Pleas of Hamilton County, within thirty (30) days after the decision by the Board of Zoning Appeals.
5. Variances issued by the Board of Zoning Appeals and not acted upon within one (1) year will be terminated.

D. Supplementary Conditions and Safeguards

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 Ordinance in the district involved or any use expressly or by implication prohibited by the terms of this Ordinance in said district. In granting any appeal or variance, the Board of Zoning Appeal may prescribe any appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the appeal or variance has been granted, shall be deemed a violation and punishable under Section 1175.16 and/or 1175.99 of this Ordinance.
(Ord. 53-09. Passed 7-21-09.)

1179.04 PROCEDURES AND REQUIREMENTS FOR APPROVAL OF CONDITIONAL USE PERMITS.

Approval of a Conditional Use Permit shall conform to the procedures and requirements of this Section, inclusive of this Ordinance, unless modified in accordance with the requirements of Chapter 1147.

A. General

It is recognized that an increasing number of new kinds of uses are appearing daily and that many of these and some other more conventional uses, possess characteristics of such unique and special nature relative to location, design, size, method of operation, circulation and public facilities, that each specific use must be considered individually. These specific uses as they are conditionally permitted under the provisions of Chapter 1143, inclusive, shall follow the procedures and requirements set forth in Section 1179.04, inclusive.

B. Contents of Application for Conditional Use Permit

An application for Conditional Use Permit shall be filed with the Director of Zoning or his/her authorized representative by at least one (1) owner or lessee of property for which such conditional use is proposed. At a minimum, the application shall contain the following information:

1. Name, address, and telephone number of property owner.
2. Legal description and street address of property.
3. Description of existing use.

4. Zoning district.
5. Description of proposed conditional use.
6. A plan of the proposed site for the conditional use showing the location of all buildings, parking and loading area, traffic access and traffic circulation, open spaces, landscaping, refuse and service areas, utilities, signs, yards, and such other information as the Board of Zoning Appeals may require to determine if the proposed conditional use meets the intent and requirements of this Ordinance.
7. A narrative statement evaluating the effects on adjoining property, the effect of such elements as noise, glare, odor, fumes, and vibration on adjoining property; a discussion of the general compatibility with adjacent and other properties in the district; and the relationship of the proposed use to the comprehensive plan.

C. General Standards Applicable to All Conditional Uses

In addition to the specific requirements for conditionally permitted uses as specified in this Ordinance, the Board of Zoning Appeals shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use is at the proper location:

1. Is in fact, a conditional use established under the provision of Chapter 1143, inclusive.
2. Will be harmonious and in accordance with the general objectives, or with any specific objective of the City's Comprehensive Plan and/or the Zoning Ordinance.
3. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.
4. Will not be hazardous or disturbing to existing or future neighboring uses.
5. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to adequately provide any such services.
6. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
7. Will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property,

or the general welfare by reason of excessive production of traffic, noise, vibration, smoke, fumes, glare, or odors.

8. Will have vehicular approaches to the property which shall be designed so as not to create an interference with traffic on surrounding public thoroughfares.
9. Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.
10. In making its determination the Board of Zoning Appeals shall apply the following standards to conditional uses in the various districts:
 - a) Business Districts, Excluding the DRD District
 - 1) The location, size, and intensity of the use and all potential traffic impacts, vehicular or pedestrian, so as to avoid the creation of undesirable and hazardous conditions.
 - 2) The layout and character of the use in relation to existing physical and economic conditions so as to foster overall harmonious relationships between characteristic groups of businesses in a district.
 - b) Industrial Districts
 - 1) The location, size, and layout of the use, with a special view to traffic routes of trucks and employees so as to avoid conflicts with other industries in the district, or interferences with existing vehicular or pedestrian traffic patterns.
 - 2) The performance characteristics with respect to noise, odor, smoke, dust, chemical discharge into the air, waste disposal, or any other environmental impacts, so as to avoid nuisance impacts.
 - 3) The observation of natural resource conservation or environmental sensitive land reclamation where applicable.
 - c) Performance Requirements The Board of Zoning Appeals shall have the power to authorize issuance of a Conditional Use Permit that is subject to Performance Requirements as set forth in Chapter 1147 of this Ordinance.

D. Specific Criteria for Conditional Uses

In granting any conditional use, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the conditional

use is granted, shall be deemed a violation of this Ordinance and punishable under Section 1175.16 and/or 1175.99.

E. Public Hearing by the Board of Zoning Appeals

The Board of Zoning Appeals shall hold a public hearing within thirty-five (35) days after the receipt of an application for a conditional use from the Director of Zoning or his/her authorized representative or an applicant.

1. Notice of Public Hearing in Newspaper

Prior to holding the public hearing required in Section 1179.04E., notice of such hearing shall be given in one (1) or more newspapers of general circulation of the City at least fifteen (15) days before the date of said hearing. The notice shall set forth the time and place of the public hearing and the specific item to be considered.

2. Notice to Parties of Interest

Prior to holding the public hearing required in Section 1179.04E., written notice of such hearing shall be mailed by the Secretary of the Board of Zoning Appeals by first class mail at least fifteen (15) days before the day of the hearing to all owners of property within, contiguous to, and directly across the street from the subject property. The mailing list shall be supplied to the Secretary by the property owners requesting the conditional use. The notice shall contain the same information as required of notices published in newspapers, as specified in Section 1179.04E.1.

F. Action by the Board of Zoning Appeals

1. Within thirty-five (35) days after the public hearing required in Section 1179.04E., the Board of Zoning Appeals shall approve, approve with supplementary conditions, as specified in Section 1179.04I., or disapprove the application as presented. All such decisions shall be supported by written findings of fact and conclusions of law.
2. If the application is approved or approved with modification, the Board of Zoning Appeals shall direct the Director of Zoning or his/her authorized representative to issue a Conditional Use Permit listing the specific conditions specified by the Board of Zoning Appeals for approval. If the application is disapproved by the Board of Zoning Appeals, the applicant may seek relief through the Hamilton County Court of Common Pleas.
3. Appeals from decisions shall be made in the manner specified in Section 1179.01.

G. Expiration of Conditional Use Permit

A conditional use permit shall be deemed to authorize only one (1) particular conditional use. Such permit shall automatically expire if, for any reason, the conditional use has not been implemented within six (6) months of issuance of the permit or if such use ceases for more than one (1) year.

H. Revocation of a Conditional Use Permit

Violation of the conditional use as approved shall be grounds for revocation of the conditional use permit. For proof that the conditional use does not comply with Section 1179.04, written complaints filed with the Board of Zoning Appeals of more than fifty percent (50%) of the property owners or authorized tenants within a three hundred foot (300') radius shall be required. For other violations, the Director of Zoning or his/her authorized representative shall be required to furnish appropriate proof of non-compliance. The Board of Zoning Appeals may revoke a conditional use permit but only after a public hearing is conducted according to procedures outlined in Sections 1179.04E.

I. Supplementary Conditions and Safeguards

In granting any conditional use, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this Ordinance and punishable under Section 1175.16 and/or 1175.99 of this Ordinance.
(Ord. 53-09. Passed 7-21-09.)

1179.05 INTERPRETATION OF OFFICIAL DISTRICT MAP.

Where the street or lot layout, actually on the ground or as recorded, differs from the street line and lot lines as shown on the Official District Zoning Map, the Board of Zoning Appeals, after notice to the owners of the property and after a public hearing, shall interpret the map in such a way as to carry out the intent and purpose of the Zoning Ordinance. In case of any questions as to the location of any boundary line between zoning districts, a request for interpretation of the Official District Zoning Map may be made to the Board of Zoning Appeals and a determination shall be made by the Board of Zoning Appeals.

1179.06 BOARD OF ZONING APPEALS MAY REVERSE OR AFFIRM ORDERS.

In exercising its power, the Board of Zoning Appeals may, in conformity with the provisions of statute and the Zoning Ordinance, reverse or affirm wholly or partly or may modify the order, requirements, decision, or determination as ought to be made and to that end, shall have all powers of the officer from whom the appeal is taken.