

## APPEALS AND VARIANCE INFORMATION AND APPLICATION

### 1242.01 DEFINITIONS.

(129) "Practical Difficulty."

A. A limitation on the development of a parcel caused by one or more of the following:

1. The shape of the parcel;
2. The topography of the parcel;
3. A legal permanent obstruction that would be unreasonable to remove or relocate;
4. Code requirements that would unreasonably limit access to or the functionality of a legal or legal non-conforming building or structure.

B. Other provisions:

1. Existing buildings or structures that would not require a building authorization and/or zoning certificate at the time of the application shall not be taken into consideration under this definition.
2. The size of a parcel shall not be considered under this definition.

(175) "Yard." An open or unoccupied space other than a court on the same lot with a principal building and unobstructed by buildings or structures from ground to sky except by trees or shrubbery or as otherwise provided herein.

(176) "Yard, Front."

A. "Front Yard." An open space extending the full width of the lot between the front lot line and the closest part of the principal building. Multiple frontage lots have a "Front Yard" on each frontage.

B. "Front Yard, Required." The shortest distance between the front lot line and the minimum front yard setback line. Multiple frontage lots have a "Required Front Yard" on each frontage.

(177) "Yard, Rear."

A. "Rear Yard." An open space extending the full width of the lot between the rear lot line and the closest part of the principal building.

B. "Rear Yard, Required." The shortest distance between the rear lot line and the minimum rear yard setback line.

(178) "Yard, Side."

A. "Side Yard." An open space extending from the front yard to the rear yard between the principal building and the nearest side lot line.

B. "Side Yard, Required." The shortest distance between the nearest side lot line and the minimum side yard setback line.

# APPEALS AND VARIANCE INFORMATION AND APPLICATION

## CHAPTER 1246 Appeals and Variances

[1246.01](#) Membership and organization of Board of Zoning Appeals.

[1246.02](#) Jurisdiction of Board of Zoning Appeals.

[1246.03](#) Procedure for appeals.

[1246.04](#) Procedure for requesting a variance.

### *CROSS REFERENCES*

Board of Zoning Appeals - see CHTR. Art. VI, §§ [6.08](#), [6.081](#)

Effect of zoning on laws and charters; continuance in newly created municipality - see Ohio R.C. 713.14

Board of Zoning Appeals - see ADM. Ch. [268](#); P. & Z. [1244.04](#)

General provisions - see P. & Z. Ch. [1240](#)

Definitions - see P. & Z. Ch. [1242](#)

### 1246.01 MEMBERSHIP AND ORGANIZATION OF BOARD OF ZONING APPEALS.

(a) The Board of Zoning Appeals consists of 5 electors appointed by the City Council in accord with Section [6.08](#) of the City Charter.

(b) The Board of Zoning Appeals conducts its proceedings in accord with rules adopted by its members under the authority granted by Section [6.08](#) of the City Charter.

(c) The Board of Zoning Appeals is a continuing body and proceedings that have been lawfully begun by one Board of Zoning Appeals can be prosecuted by succeeding Boards of Zoning Appeals until completed and made effective.

(Ord. 16-2003. Passed 5-1-03.)

### 1246.02 JURISDICTION OF BOARD OF ZONING APPEALS.

The Board of Zoning Appeals shall have the following jurisdiction:

(a) Administrative Appeal. To hear and decide an appeal of the decision of the Zoning Administrator's order, requirement, decision or determination in the enforcement of the provisions of the Zoning Code.

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(b) Variance.

(1) To hear and decide applications for variances from the dimensional standards applicable to lots, buildings and structures, consistent with Section [1246.04](#) of this Zoning Code. See definitions of "Variance" and "Practical Difficulty" as set forth in Section [1242.01](#).

(2) The Board of Zoning Appeals is without authority to consider variances within Planned Unit Development (PUD) zoning districts, because the Planning Commission maintains continuing jurisdiction over such districts once they are established.

(c) Other matters as assigned by ordinance.

(Ord. 16-2003. Passed 5-1-03.)

### 1246.03 PROCEDURE FOR ADMINISTRATIVE APPEAL.

(a) Eligibility. An administrative appeal of the decision of the Zoning Administrator's order, requirement, decision or determination in the enforcement of the provisions of the Zoning Code may be taken to the Board of Zoning Appeals by any person directly and adversely affected, or by any officer of the City acting within the scope of employment.

(b) Application forms: The application for an administrative appeal shall be completed on a form provided by the City.

(c) Application for Administrative Appeal. To be eligible to apply for an administrative appeal, the applicant must first have received written denial of a Zoning Certificate application by the Zoning Administrator. The application for an administrative appeal shall be filed with the Zoning Administrator not longer than 20 days after the actual mailing date of the written denial. The application shall be filed on forms provided by the City accompanied by payment of any fees for the administrative appeal application. Any administrative appeal application and fees shall be received at least 14 days prior to the next available Board of Zoning Appeals hearing.

(d) Hearing of an Administrative Appeal. The Board of Zoning Appeals shall select a time and place for the hearing of the application and shall give at least 10 days written notice of the administrative appeal hearing to the owners and/or tenants of property contiguous to and directly across the street from the subject property. Failure of delivery of any or all of such notices, even if caused by error of the applicant or the City, shall not invalidate the decision of the Board. In addition, public notice of the hearing as to the time, place, date and subject of the hearing shall be published in a newspaper of general circulation in the City at least 10 days prior to the date of the hearing. Any party in interest may appear and be heard at the hearing in person, by agent or by legal counsel. At its option, the Board may hold any or all of its hearings with sufficient formalities to eliminate the need for a de novo review by the courts in the event of an appeal under Ohio R.C. Chapter 2506.

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(e) Recommendations of the Zoning Administrator. The Zoning Administrator may make recommendations to the board as to any case before it.

(f) Decision on Administrative Appeal. The decision of the Board of Zoning Appeals shall be final, subject only to appeal to a court of competent jurisdiction. The Board shall render a written decision on the application to the applicant and City Council not later than 60 days following the close of its hearing, unless a longer period is agreed to by the applicant. Nothing in this Zoning Code shall prevent the Board from continuing a hearing into successive meetings until all information needed to make an informed decision has been obtained to its satisfaction and the Board has had sufficient opportunity to review and analyze the information. A Zoning Certificate may be issued by the Zoning Administrator at any time after 30 days following the date the decision becomes effective.

(g) Period of Validity. An administrative appeal granted by the Board of Zoning Appeals shall lapse at the end of 6 months from the date on which the Board grants the administrative appeal, unless within the 6-month period a zoning certificate is obtained for the proposed change or improvement.

(h) Appeal by City Council. City Council shall have standing to appeal the decision of the Board of Zoning Appeals to a court of competent jurisdiction within 30 days following the date that the decision by the board becomes effective.

(Ord. 16-2003. Passed 5-1-03.)

### 1246.04 PROCEDURE FOR REQUESTING A VARIANCE.

(a) Eligibility. A request for a variance may be made only by a legal or equitable owner of the subject property.

(b) Application forms. The application for a variance shall be completed on a form provided by the City.

(c) Application for a Variance. To be eligible to apply for a variance, the applicant must first have received written denial of a Zoning Certificate application by the Zoning Administrator. The application for a variance shall be filed with the Zoning Administrator not longer than 20 days after the actual mailing date of the written denial. The application shall be filed on forms provided by the City accompanied by payment of any fees for the variance application. Any variance application and fees shall be received at least 14 days prior to the next available Board of Zoning Appeals hearing.

(d) Hearing of a Variance. The Board of Zoning Appeals shall select a time and place for the hearing of the variance request and give at least 10 days written notice of the hearing to the owners and/or tenants of property contiguous to and directly across the street from the subject property. Failure of delivery of any or all of such notices, even if caused by error of the applicant

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or the City, shall not invalidate the decision of the Board. In addition, public notice of the hearing as to the time, place, date and subject of the hearing shall be published in a newspaper of general circulation in the City at least 10 days prior to the date of the hearing. Any party in interest may appear and be heard at the hearing in person, by agent or by legal counsel. At its option, the Board may hold any or all of its hearings with sufficient formalities to eliminate the need for a de novo review by the courts in the event of an appeal under Ohio R.C. Chapter 2506.

(e) Criteria for Approval. The Board of Zoning Appeals shall have authority to grant dimensional variances for the location (setback), height, bulk, or lot coverage of proposed buildings or other proposed improvements to properties regulated by this Zoning Code. In no case shall the Board have authority to grant variances as to use. No variance from the terms of this Zoning Code may be granted until the Board evaluates the proposed variance in view of the following criteria, and makes written findings of fact as to these criteria and any other matters that the Board may find relevant. An affirmative finding as to each of the following criteria is necessary to the approval of a variance:

(1) The requested variance is justified by a practical difficulty.

(2) The practical difficulty was not created by the unlawful acts or omissions of any owner or tenant.

(3) The practical difficulty does not commonly occur in any neighborhood in the City having the same zoning classification as the subject property.

(4) Approval of the variance would not materially damage the character of the neighborhood.

(5) Approval of the variance would not violate a significant legislative purpose of the Zoning Code.

(6) Approval of the variance would not reduce the efficiency of emergency services or adversely and unreasonably affect non-emergency public services.

(7) There is no reasonable solution to the practical difficulty other than a variance and the variance requested is the least that can reasonably reduce the practical difficulty.

(f) Recommendations of the Zoning Administrator. The Zoning Administrator may make recommendations to the board as to any case before it.

(g) Conditions and Restrictions. In granting a variance, the Board of Zoning Appeals may impose such conditions, safeguards, and restrictions on the premises benefited by the variance as may be necessary to respond to the concerns set out in division (e) of this section or to reduce or minimize potentially injurious effects of the variance on other properties in the neighborhood, or to carry out the general purpose and intent of this Zoning Code.

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(h) Decision on a Variance. The decision of the Board of Zoning Appeals shall be final, subject only to appeal to a court of competent jurisdiction. The Board of Zoning Appeals shall render a written decision on the application to City Council and the applicant not later than 60 days after the close of the hearing, unless a longer period is agreed to by the applicant.

(i) Period of Validity. A variance granted by the Board of Zoning Appeals shall lapse at the end of 6 months from the date on which the Board grants the variance, unless within the 6-month period a zoning certificate is obtained for the proposed change or improvement.

(j) Appeal by City Council. City Council shall have standing to appeal the decision of the Board of Zoning Appeals to a court of competent jurisdiction within 30 days following the date that the decision by the board becomes effective.

(Ord. 16-2003. Passed 5-1-03; Ord. 12-2006. Passed 6-1-06.)

# APPEALS AND VARIANCE INFORMATION AND APPLICATION

Board of Zoning Appeals  
Case No: \_\_\_\_\_  
Filed Date: \_\_\_\_\_

## APPLICATION FOR APPEAL OR VARIANCE

Applications for Appeal or Variance must be typewritten.

### APPEAL PROCEDURE

Appeals to the Board of Zoning Appeals shall be filed within 20 (twenty) days after the decision of the Zoning Administrator by filing a written notice of appeal with the Zoning Administrator. The notice of appeal shall be filed on forms provided by the City of Trenton, specifying the grounds for the appeal and providing an accurate list of the names and current tax mailing addresses of all persons to be notified. On receipt of a notice of appeal, the Zoning Administrator shall forthwith transmit to the Board the notice and all papers constituting the record on which the decision being appealed is based. {§1246.03} Associated Fee \$200.00.

(A) Grounds for Appeal.

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(B) Attach an accurate list of the names and current tax mailing addresses of all persons to be notified.

(C) Reason for Refusal \_\_\_\_\_

(D) Address of Refusal \_\_\_\_\_

(E) Date of Refusal \_\_\_\_\_

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## **VARIANCE PROCEDURE**

An application for a zoning certificate shall be filed with the Zoning Administrator, and if the application is rejected, a copy of the application and its written rejection shall be forwarded to the Secretary of the Board of Zoning Appeals. {§1246.04} The application for a variance shall be made on forms provided by the Zoning Administrator, which shall contain the following, at a minimum: Associated Fee \$200.00.

### **Description of property and nature of variance**

(A) The nature of the variance including the specific provisions of this Zoning Code from which the variance is requested.

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(B) A description sufficient to identify the property, including a reference of the volume and page of the last recorded deed.

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(C) A statement of the special circumstances or conditions applying to the land or structure and not applying generally throughout the neighborhood or zoning district.

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(D) A statement showing that the special conditions and circumstances do not result from the actions of the applicant.

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(E) A statement showing that the granting of the variance is necessary to the preservation and enjoyment of substantial property rights.

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(F) An accurate list of the names and current tax mailing addresses of all owners of property contiguous to, or directly across the street from, the subject property,

CITY SHALL COMPLETE



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(G) Such other information regarding the appeal as may be pertinent to appropriate action by the Board of Zoning Appeals.

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**The Variance Application shall be accompanied by one copy of a plot plan drawn to an appropriate scale showing the following:**

- (A) The boundaries and dimensions of the lot.
- (B) The size and location of existing and proposed structures.
- (C) The proposed use of all parts of the lot and structures, including access ways, walks, off-street parking, loading spaces, and landscaping.
- (D) The relationship of the requested variance to the standards set by this Zoning Code.
- (E) The use of land and location of structures on adjacent property.

Applicant: \_\_\_\_\_ Address: \_\_\_\_\_

Owner: \_\_\_\_\_ Address: \_\_\_\_\_

Lessee: \_\_\_\_\_ Address: \_\_\_\_\_

## TO THE BOARD OF ZONING APPEALS

The Undersigned, \_\_\_\_\_, hereby Appeals / Applies for the permission to in accordance and all data hereto attached and made a part of this application. No Previous application or appeal under the City Zoning Ordinance has been made by me affecting these premises. I hereby depose and say that all the above statements and the statements contained in all the exhibits transmitted herewith are true.

Signed on (date) \_\_\_\_\_.

COST \_\_\_\_\_