

CHAPTER 1121
Board of Zoning Appeals

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CROSS REFERENCES

Appeals from zoning decisions - see Ohio R.C. 713.11

Appeals from administrative agencies - see Ohio R.C. Ch. 2506

1121.01 MEMBERSHIP; TERM.

There is established the Board of Zoning Appeals of three members, consisting of the Mayor, President of Council and a resident freeholder appointed by the Mayor and approved by Council prior to the effectiveness of the appointment for a term consisting of two years commencing on January 1 of the even numbered years, but who shall initially be appointed for a term ending December 31, 1963. (Ord. 3403. Passed 4-16-08.)

1121.02 FUNCTIONS.

The functions of the Board of Zoning Appeals shall be:

- (a) To review and determine appeals from decisions of the Commissioner of Buildings under this Code, except as otherwise specified in Chapter 1154 and Chapter 1171, or in the refusal of any permit. (Ord. 3071. Passed 7-18-01.)
- (b) To interpret the provisions of this Code where there is doubt of its meaning or application;
- (c) To make variances in the application of the regulations in cases of practical difficulty and unnecessary hardship, which shall be confirmed by Council before being effectual. (Ord. 1600. Passed 7-26-62.)

1121.03 MEETINGS OPEN TO PUBLIC; OFFICERS.

All meetings of the Board of Zoning Appeals shall be public. It shall keep minutes of its proceedings. The Mayor shall be chairman of the Board and it shall elect a secretary who shall keep the records and minutes of the Board and perform such other duties as the Board shall delegate. (Ord. 1600. Passed 7-26-62.)

1121.04 RULES AND BY-LAWS.

The Board of Zoning Appeals shall adopt, from time to time, such rules and by-laws as it may deem necessary to carry into effect the provisions of this Code and for the holding of regular or special meetings, the transaction of its business and the exercise of its powers. (Ord. 1600. Passed 7-26-62.)

1121.05 QUORUM.

A majority of the members shall constitute a quorum for the transaction of business of the Board of Zoning Appeals. (Ord. 1600. Passed 7-26-62.)

1121.06 POWERS.

The powers herein prescribed are to be exercised in accordance with the provisions of this Code, and where the manner of exercise is not set forth by the rules of the Board. All powers shall be strictly construed so that the spirit of this Code is not violated. (Ord. 1600. Passed 7-26-62.)

1121.07 VARIANCES.

Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the provisions of this Code, the Board of Zoning Appeals shall have the power, in a specific case of a property owner, to vary any such provisions in harmony with its general purpose and intent so that the public safety, health, morals and general welfare may be secured and substantial justice done.

In granting such variance, the Board shall make it subject to such appropriate conditions and safeguards as will, in the Board's opinion, protect as far as reasonable the health, safety, attractiveness and value of adjoining and surrounding property. (Ord. 1600. Passed 7-26-62.)

1121.08 INTERPRETATION OF CODE BY BOARD IF DOUBT ARISES.

The Board of Zoning Appeals may interpret the application of the provisions of this Code where there is doubt as to its meaning or application. If there arises any misunderstanding in reference to the interpretation of any of the uses, such misunderstanding shall constitute a special case and shall be left to the discretion of the Board. (Ord. 1600. Passed 7-26-62.)

1121.09 PUBLIC HEARING PRIOR TO DECISION.

Before determining any appeal or application, the Board of Zoning Appeals shall give public notice and hold a public hearing. (Ord. 1600. Passed 7-26-62.)

1121.10 APPLICATION INFORMATION; NOTICE OF HEARING TO NEIGHBORS; FEE.

Before any variance, interpretation or exception shall be considered, the property owner shall file a written application therefor. It shall set forth the location of the premises, the names and addresses of adjacent property owners, a clear statement of the reasons in support thereof and such other information as the Board of Zoning Appeals may require. The application shall be open for public inspection. Application to the Board, as provided above, shall be accompanied by a nonrefundable filing fee of twenty-five dollars (\$25.00).

Upon filing of any application, and the required fee therewith, the Board shall cause public notice thereof to be given and at least five days prior to the public hearing and shall cause notice thereof to be sent by registered or certified mail to all property owners

as shown upon the County Auditor's duplicate and within 300 feet of the land in question. Where such land is under the same ownership, the owners of all property adjoining shall be notified. Failure of delivery of such notice shall not invalidate the proceeding. (Ord. 2077. Passed 5-18-77.)

1121.11 APPEAL PROCEDURE.

The applicant or property owner may appeal to the Board from any decision of the Commissioner of Buildings including his refusal to issue any permit. Notice of appeal from the decision shall be filed with the Commissioner within ten days after the decision. Within three days he shall file the notice of appeal with all original papers and a transcript with the secretary or chairman of the Board of Zoning Appeals. A hearing de novo shall be afforded the appellant within thirty days after receipt of such transcript. (Ord. 1600. Passed 7-26-62.)

1121.12 SUBPOENA OF WITNESSES.

The Board shall have, and is hereby granted, the power to subpoena within Cuyahoga County and require the attendance and testimony of witnesses and the production of books, papers, public records and other documentary evidence pertinent to its hearing on appeal or applications, as is authorized by this Code. It may examine or permit examination, including cross-examination, of any such witness in relation to the appeal, application or any matter in which it has authority to hear and determine. (Ord. 1600. Passed 7-26-62.)

1121.13 PRECIPE; WITNESS FEES.

A precipe for a subpoena may be filed by any party under the rules of the Board of Zoning Appeals. Witnesses may be subpoenaed and their attendance compelled within Cuyahoga County, Ohio. Fees shall be allowed to witnesses on their certificate and shall be paid by the Treasurer of the Village on warrants issued by the Clerk for attendance and traveling, as is provided in Ohio R. C. 2335.06 for witnesses in courts of record. Such fees and travel allowance shall be taxed as costs of the appeal, or proceeding. The Board may require a deposit for the subpoena of any witness at the time of filing of the precipe but no deposit shall be required in the case of a witness subpoenaed on behalf of an administrative officer or the Village. The Police Department shall be responsible for the serving of subpoenas and enforcement of the Board's orders. (Ord. 1600. Passed 7-26-62.)

1121.14 DISOBEDIENCE OF SUBPOENA.

In case any person willfully fails to obey a subpoena of the Board of Zoning Appeals or secretes himself to avoid being served a subpoena, or refuses to be sworn or to affirm, or refuses to answer a question required to be answered, he shall be charged as provided in Ohio R. C. Ch. 2705 and shall be subject to the penalties thereunder. (Ord. 1600. Passed 7-26-62.)

1121.15 HEARING PROCEDURE.

The hearing of any appeal or application by the Board of Zoning Appeals shall proceed as in the trial of a civil action. Any contiguous or neighboring property owner especially affected by the appeal or application, may become a party thereto. The appellant or any

party shall be permitted to appear and be heard in person or by his attorney and to present his position, arguments and contentions, to offer and examine witnesses, and present evidence, to cross-examine witnesses, to offer evidence to refute evidence and testimony offered in opposition to his position, arguments and contentions and to proffer any such evidence into the record. The testimony adduced shall be given under oath. Every person who submits to testimony shall be sworn. Any party may call any other party as if on cross-examination. (Ord. 1600. Passed 7-26-62.)

1121.16 APPEAL FROM BOARD.

Upon the filing of a notice of appeal as provided in Ohio R.C. Chapter 2506 and an appropriate precipe, the secretary of the Board of Zoning Appeals shall prepare a transcript as required by law and file the same in the court to which the appeal is taken, provided such notice of appeal is filed within the period allowed by law. Such transcript shall contain the original papers, testimony, if available, and evidence offered, heard and taken in consideration of the order appealed from. The secretary shall require a deposit as provided by ordinance, together with the actual cost of reducing the testimony to writing, and all such costs shall be taxed as a part of the cost of the appeal. (Ord. 1600. Passed 7-26-62.)

1121.17 FINAL ORDER.

In rendering any final order, adjudication or decision, the Board of Zoning Appeals shall make and file conclusions of fact supporting such order, adjudication or decision. (Ord. 1600. Passed 7-26-62.)