

CHAPTER 26: BOARD OF ZONING APPEALS

26.01 Powers

The Board of Zoning Appeals shall have the powers and duties as outlined in Ohio Revised Code 713.11. In exercising its powers, the Board may in conformity with the Ohio Revised Code, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and it may make such order, requirement, decision or determination as ought to be made and to that end shall have all powers of an officer from whom the appeal is taken.

26.02 Duties

- (A) **Appeal of Administrative Decisions:** To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative official, including the Zoning Inspector, in the enforcement of Section 713.11 of the Ohio Revised Code, or any resolution adopted pursuant thereto. [See Sec. 26.03.](#)
- (B) **Variations:** To authorize, upon appeal, in specific cases, such variance from the terms of the Zoning Ordinance as will not be contrary to the public interest, where owing to special condition, a literal enforcement of said Ordinance will result in unnecessary hardship and so that the spirit of the Zoning Ordinance shall be observed and substantial justice done. Under no circumstances shall the Board of Zoning Appeals grant a use specifically prohibited by the Zoning Ordinance, in the District involved. [See Sec. 26.04.](#)
- (C) **Non-Conforming Uses:** The Board shall have the power to authorize the completion, restoration, reconstruction, in whole or in part, extension, or substitution of non-conforming uses; taking into consideration the nature of such uses in relationship to the character of the adjacent uses, lot size, setback lines, traffic conditions, terrain, and all other factors which, in the opinion of the Board are pertinent to such completion, restoration, reconstruction, extension, or substitution. [See Chapter 25 \(Nonconforming Uses\).](#)
- (D) **Conditional Uses:** [The Board shall have the power to hear and determine Conditional Use cases for use of land, buildings, or other structures. See Sec. 26.05.](#)

26.03 Administrative Appeals

- (A) **Purpose:** [This Section sets out the procedure to follow when a person claims to have been aggrieved or affected by an administrative decision of the Zoning Inspector, other administrative official, or administrative decisions of a board of the Village.](#)
- (B) **Initiation:** [Administrative appeals shall be initiated by the person aggrieved or affected by any order, decision, determination, or interpretation made by the Zoning Inspector,](#)

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other administrative official, or administrative decision of a board of the Village charged with the administration or enforcement of this Zoning Ordinance.

(C) Application Requirements

- (1) Name, address, fax number, e-mail address, and phone number of the owner/agent of the property;
- (2) Date submitted to, and accepted complete, for processing by the Zoning Inspector;
- (3) The identification number of the parcel(s) of the appeal submitted; the name of the zoning district and the applicable Section, Town, and Range or Military Survey number(s) in which the site is located; the road address of the site, if issued; and, if applicable, the name of the subdivision and the lot number(s) of the site and other identifying references provided, if necessary, to accurately establish the location of the appeal site;
- (4) Statement of the grounds as reason(s) for submitting the application for administrative appeal;
- (5) Signature of the applicant on the application form attesting to the truth and correctness of all information provided on the application form and in any other accompanying information; and
- (6) The applicable submittal fee established by Village Council.

(D) Review Procedure: The review procedure for an administrative appeal shall be as follows unless otherwise specified in this Zoning Ordinance:

- (1) **Step 1 – Submission of Appeal (Application):** An appeal pursuant to this Section shall be initiated by filing a written appeal of the administrative decision or determination within thirty (30) days of the date of the order, decision, determination, or interpretation.
- (2) **Step 2 – Forwarding of the Record to the BZA:** The Zoning Inspector shall forthwith transmit to the BZA all papers constituting the record upon which the action appealed from was taken and shall be treated as and be the respondent in such further proceedings.
- (3) **Step 3 – BZA Hearing and Decision on Appeal**
 - (a) The BZA shall hold a public hearing for the appeal within sixty (60) days of the application and give public notice.
 - (b) The affected party may appear at the hearing in person or by attorney.
 - (c) The BZA shall make a decision on the appeal within sixty (60) days of the date of the hearing.

(E) Review Criteria: An order, decision, determination, or interpretation shall not be reversed or modified unless there is competent material and substantial evidence in the record that the order, decision, determination, or interpretation fails to comply with

either the procedural or substantive requirements of this Zoning Ordinance, state law, or the federal or state constitutions.

- (F) Conditions:** The BZA may impose conditions upon an affirmative decision to ensure that the requirements and purposes of this Zoning Ordinance are followed in the order, decision, determination, or interpretation.
- (G) Stay:** A properly submitted appeal shall stay all administrative proceedings by the Village in furtherance of the action appealed, unless the Zoning Inspector or other administrative official from whom the appeal is taken certifies to the BZA that a stay would cause imminent peril to life or property, in which case the administrative proceedings shall not be stayed unless a restraining order is granted by the BZA for good cause shown.
- (H) Appeal:** The decision of the BZA may be reviewed by the Court of Common Pleas as provided in Chapter 2505 and 2506 of the Ohio Revised Code.

26.04 Variances

- (A) Purpose:** Variance is provided as a type of application for appeal to the Board of Zoning Appeals (BZA) by which a property owner may be granted relief or release from a dimensional and/or numeric requirement of this Zoning Code.
- (B) Appropriateness:** Applying for a variance is inappropriate for any of the following:

 - (1) Use variances;
 - (2) Development within a Planned Unit Development District;
 - (3) Changes which would increase the allowable density of a property; and
 - (4) Before a zoning permit has been denied by the Zoning Inspector.
- (C) Application Requirements:** The required application form and information to accompany the request for variance shall be to the satisfaction of the Zoning Inspector. The following information should be provided to the greatest extent possible:

 - (1) The specific variance requested;
 - (2) The special conditions supporting the request;
 - (3) Why a variance is not contrary to the public interest;
 - (4) Setting forth demonstrable facts showing that special conditions exist; and
 - (5) Describing the unnecessary hardship that would result if the variance were not granted.
- (D) Review Procedure**

 - (1) Step 1 – Consultation with Zoning Inspector**

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(a) Prior to submitting a variance application, the applicant or property owner shall first consult with the Zoning Inspector.

(b) The purpose of this informal consultation is to:

(i) Discuss applicable standards and technical issues pertinent to the proposal;

(ii) Comment on whether or not the variance application is the necessary and appropriate process.

(2) Step 2 – Formal Submittal and Processing

(a) The applicant shall formally submit the required application to the Zoning Inspector.

(b) The Zoning Inspector has the duty to determine whether such application is complete within ten (10) working days of receipt of the application. If the Zoning Inspector believes that legally adequate grounds for the variance have not been properly stated in the application, then he or she may refer the matter to the Village Law Director for an opinion.

(c) If the Zoning Inspector determines that the application is not complete, the applicant shall be notified, in writing, of the specific deficiencies of the application including any additional information that must be supplied. The applicant shall be informed that no further action will be taken by the Village on the application until the deficiencies are corrected.

(d) Upon receipt of a complete application, the Zoning Inspector shall notify the applicant of completeness. The Zoning Inspector shall then provide the accepted application to applicable authorities and departments involved for review of the plan and allow fifteen (15) days to respond and receive comments before the Zoning Staff Report is sent to the Board of Zoning Appeals (BZA).

(3) Step 3 – Review and Action

(a) The BZA shall hold a quasi-judicial hearing to hear sworn testimony and consider evidence regarding the proposed variance.

(b) Upon closing the quasi-judicial hearing, the BZA shall adopt a resolution to approve or deny the variance as submitted. Appeal of the BZA's decision is to the Court of Common Pleas.

(E) **Review Criteria:** The BZA shall not authorize approval of variance(s) unless the Board documents Findings of Fact based on the evidence presented upon appeal. The standards for granting such variance from the terms of the Zoning Ordinance to be considered are as follows:

(1) That granting a variance will not be contrary to the public interest;

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- (2) Where, owing to special conditions, a literal enforcement of the Zoning Ordinance will result in an unnecessary hardship;
- (3) That the spirit of the Zoning Ordinance will be observed if a variance is granted; and
- (4) Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are:
 - (a) Exceptional irregularity
 - (b) Narrowness
 - (c) Shallowness
 - (d) Steepness of Lot
 - (e) Adjacency to non-conforming and inharmonious uses, structures, or conditions.

(F) Restrictions on Board Action: No variance in the application of the provisions of this Zoning Code shall be made by the BZA relating to buildings, land or premises now existing or to be constructed, unless, after a public hearing, the BZA shall find that such variance will not:

- (1) Alter the land use characteristics of the district, except as otherwise provided in this Zoning Code.
- (2) Impair the adequate supply of light and air to adjacent property.
- (3) Increase the hazard of fire, flood and other dangers on the property.
- (4) Diminish the marketable value of adjacent lands and buildings.
- (5) Increase the congestion in the public streets.
- (6) Otherwise impair the public health, safety, convenience, comfort and general welfare.

(G) Applicable Requirements and Provisions Following Variance Approval

- (1) Permits or Approvals from Other Involved Authorities:** The applicant is responsible for obtaining all necessary permits.
- (2) Development and Maintenance Per the Approved Variance(s):** It is the responsibility of the property owner to develop, improve, operate, and maintain the site, including the buildings, structures, and all elements in accordance with the approved conditions and restrictions.
- (3) Modification of the Approved Variance:** Modification of the approved variance(s) requires re-application to the BZA.

(H) Case File Record

- (1) Application files maintained by the Zoning Inspector shall contain all written information submitted. The application file is numbered by the year in which the application was reviewed and consecutive to other applications within the same year.
- (2) Written meeting minutes and audio recording(s) of the proceedings of a hearing may be referenced at the offices of the Village.
- (3) The letter or resolution of the BZA in decision on the variance is placed in the case file and provided to the applicant.

26.05 Conditional Uses

(A) Purpose and Approval

- (1) Conditional use is provided as a category and means of permitting certain uses listed in Tables 5.2, 5.3, 23.1, or anywhere else in the Zoning Ordinance as potentially acceptable.
- (2) Allowance of a conditional use is contingent on the Board of Zoning Appeals (BZA) granting approval in request for such use.
- (3) A conditional use may only be approved if the BZA finds that the proposal is in accordance with this Section and meets applicable use-specific requirements, or any additional conditions specified by the BZA.
- (4) A conditional use application shall be accompanied by a site plan review application; the site plan review shall be consistent with the requirements of Chapter 30 (Site Plan Review), unless otherwise amended by this Section. Site plan approval by the BZA shall be considered a separate decision item from conditional use approval. Conditional use approval shall be considered a prerequisite to site plan approval. Conditional use and site plan review applications pertaining to the same site may be reviewed consecutively by the BZA on the same published date and time.

(B) Application Requirements: The applicant shall submit the required application form and fee. The information to accompany the application for conditional use shall be the same as the information required for site plan review as specified in Chapter 30 (Site Plan Review).

(C) Review Procedure

(1) Step 1 – Consultation with Zoning Inspector

- (a) Prior to submitting a conditional use application, the applicant or property owner shall first consult with the Zoning Inspector.
- (b) The purpose of this informal consultation is to:

(i) Discuss applicable standards and technical issues pertinent to the proposal;

(ii) Comment on whether or not the conditional use application is the necessary and appropriate process.

(2) Step 2 – Formal Submittal and Processing

(a) The applicant shall formally submit the required application to the Zoning Inspector.

(b) The Zoning Inspector has the duty to determine whether such application is complete within ten (10) working days of receipt of the application.

(c) If the Zoning Inspector determines that the application is not complete, the applicant shall be notified, in writing, of the specific deficiencies of the application including any additional information that must be supplied. The applicant shall be informed that no further action will be taken by the Village on the application until the deficiencies are corrected.

(d) Upon receipt of a complete application, the Zoning Inspector shall notify the applicant of completeness. The Zoning Inspector shall provide the accepted application to applicable authorities and departments involved for review of the plan and allow fifteen (15) days to respond and receive comments before the Zoning Staff Report is sent to the Board of Zoning Appeals (BZA).

(3) Step 3 – Review and Action

(a) The BZA shall hold a quasi-judicial hearing to hear sworn testimony and consider evidence regarding the proposed conditional use.

(b) Upon closing the quasi-judicial hearing, the BZA shall adopt a resolution to approve or deny the conditional use application as submitted, or to approve with conditions. Conditions may include plan revisions and safeguards to be performed by the applicant. Appeal of the BZA decision is to the Court of Common Pleas.

(D) Review Criteria

(1) In reviewing conditional uses, the BZA shall consider the following in the interest of public health and safety, public convenience, comfort, prosperity, or general welfare:

(a) The use is a conditional use, permitted with approval by the BZA, in the district in which the subject lot is located (except as provided in Chapter 25 Nonconforming Uses);

(b) Whether the use deviates from the suggestions of the Comprehensive Plan; and

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(c) The conditional use will not substantially and/or permanently injure the appropriate use of neighboring properties and will serve the public convenience and welfare.

(2) In order to approve a conditional use, the BZA shall consider the following review criteria:

(a) The use will be harmonious with, and in accordance with, the purpose of this Zoning Ordinance;

(b) The use will conform to the general character of the neighborhood in which it will be located;

(c) Imposing special conditions or requirements that would mitigate the special characteristics which are inherent to the use and enable compatibility with the existing neighborhood;

(d) The use complies with all applicable provisions of this Zoning Ordinance, including any use specific standards;

(e) The use 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 the use will not change the essential character of the area;

(f) The use 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;

(g) That the proposed use at a particular location shall be shown as necessary or desirable in providing a service or facility that will not be detrimental to the general well being of the surrounding area.

(h) That such use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity; and

(i) Only one (1) conditional use is allowed on a parcel of property.

(E) Applicable Requirements and Provisions Following Use Approval

(1) Permits or Approvals from Other Involved Authorities: The applicant is responsible for obtaining all necessary permits or approvals from other approving authorities before issuance of the zoning permit.

(2) Development and Maintenance in Compliance with Approved Plan: It is the responsibility of the owner of the property for which the conditional use approval has been granted, or of their duly authorized agent(s) acting in their behalf, to develop, improve, operate, and maintain the site, including the buildings, structures, and all development component elements of the use, in accordance with the approved plan and all conditions of approval.

(F) Case File Record

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- (1) Application files maintained by the Zoning Inspector shall contain all written information submitted. The application file is numbered by the year in which the application was reviewed and consecutive to other applications within the same year.
- (2) Written meeting minutes and audio recording(s) of the proceedings of a hearing may be referenced at the offices of the Village.
- (3) The decision resolution on the amendment is placed in the case file. A copy of the decision resolution is provided to the applicant.

~~(1) **Permits:** To hear and determine the Conditional Use Zoning Permits for the use of land, buildings, or other structures. The following provisions shall apply to the issuance of a Conditional Use Permit:~~

~~(A) **Authorization:** Specifically listed Conditional Uses are provided within the zoning district regulations in recognition that such uses, although often desirable, will more intensely affect the surrounding area in which they are located than the Permitted Uses of such zoning district.~~

~~The intent of the procedure for authorizing a Conditional Use is to set forth the development standards and criteria for locating and developing Conditional Uses in accordance with the nature of the surrounding area, conditions of development and with regard to appropriate plans.~~

~~(B) **Application for Conditional Use:** Any person owning or having interest in property may file an application to use such property for one (1) or more Conditional Uses provided for by this Resolution in the zoning district in which the property is situated. An application for a conditional use permit shall be filed with the Zoning Inspector and forwarded to the Secretary of the Board of Zoning Appeals.~~

~~(2) **Application Requirements:** The application for a Conditional Use shall contain the following:~~

~~(A) **Description of the Property and Intended Use**~~

~~(1) A description of the property including a reference of the book and page of the last recorded deed.~~

~~(2) The proposed use of the property.~~

~~(3) A statement of the necessity or desirability of the proposed use to the property and land use.~~

~~(4) A statement of the compatibility of the proposed use to other property and lane.~~

~~(5) Such other information regarding the property, proposed use or surrounding areas as may be pertinent to the application~~

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~~or required for appropriate action by the Board of Zoning Appeals.~~

~~(B) Plot Plan~~

- ~~(1) Title of the drawing with the name and address of the applicant.~~
- ~~(2) Drawing to scale with scale size, North Point and date.~~
- ~~(3) Size of the lot showing lot dimensions and dimensions of any existing or proposed structures.~~
- ~~(4) Distances of all setback lines for all existing and proposed structures on the lot.~~
- ~~(5) Existing and proposed driveways, walkways, patios, decks, etc.~~
- ~~(6) Identify any access or drainage easements on the lot.~~
- ~~(7) Identify all property and property owners within two hundred (200) feet of the property.~~
- ~~(8) Identify all streets, roads and subdivisions within two hundred (200) feet of the applicant's property.~~

~~(C) Fees.~~ Fees as established by the Village Council

- ~~(3) **Hearing on Conditional Uses:** A public hearing on the application shall be held by the Board and notice thereof given, as specified by the Ohio Revised Code.~~
- ~~(4) **Standards for Conditional Use:** The Board shall not grant a Conditional Use unless it shall, in each specific case, make specific written findings of fact directly based upon the particular evidence presented to it, that supports the conclusions that:
 - ~~(A) The proposed Conditional Use will comply with all applicable regulations of this Resolution, including lot size requirements, development standards and use limitations.~~
 - ~~(B) Adequate utility, drainage and other such necessary facilities have been or will be provided.~~
 - ~~(C) Adequate access roads or entrance and exit drives will be provided and will be so designed as to prevent traffic hazards and to minimize traffic conflicts and congestion to public streets.~~
 - ~~(D) All necessary permits and licenses have been obtained or evidence has been submitted that such permits and licenses are obtainable for the proposed Conditional Use on the subject property.~~~~

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~~(E) The location and size of the Conditional Use, the nature and intensity of the operation involved or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it shall be such that it will be in harmony with the appropriate and orderly development, use and enjoyment of adjacent land, buildings and structures.~~

~~(F) The location, nature and height of buildings, structures, walls and fences on the site and the nature and extent of landscaping and screening on the site shall be such that the use will not unreasonably hinder or discourage the appropriate development, use and enjoyment of adjacent land buildings and structures.~~

~~(G) Evidence that the Conditional Use desired will not adversely affect the public health, safety and morals.~~

~~(5) **Conditions and Restrictions:** In granting a Conditional Use Permit, the Board may impose such conditions, safeguards or restrictions upon the premises benefited by the Conditional Use as may be necessary to comply with the standards set out in Section 26.04. In order to reduce or minimize potentially injurious affects of such Conditional Uses upon other property in the neighborhood and to carry out the general purpose and intent of this Ordinance.~~

~~(6) **Decision on Conditional Uses:** The concurring vote of a majority of the members of the Board present at the meeting shall be necessary to reverse or modify any decision of the Zoning Inspector under this Ordinance. The Board shall render a written decision on the application without unreasonable delay after the close of a hearing and in all cases, within thirty (30) calendar days after the close of the hearing.~~

~~(7) **Period of Validity:** A Conditional Use Permit granted by the Board shall terminate at the end of twelve (12) months from the date on which the Board grants the Conditional Use, unless within the twelve (12) month period a building permit is obtained and the erection or alteration of a structure is started.~~