1105.09 ZONING PERMIT.

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1105.08 VARIANCES.

(a) Purpose. The purpose of a variance is to provide limited relief from the requirements of this code in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this code. It is not intended that a variance be granted merely to remove inconveniences or financial burdens that the requirements of this code may impose on property owners in general. Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission.

(b) Variance Review Procedure. The review procedure for a variance shall be as follows:

(1) Step 1 - Application. The applicant shall submit an application in accordance with Section 1105.01: Common Review Requirements, and with the provisions of this section.

(2) Step 2 - BZBA Review and Decision.

A. The BZBA shall hold a public hearing on the variance application at its next regularly

scheduled meeting, or at a special meeting, after the application is determined to be complete.

B. Notification of the public hearing shall be provided in accordance with Section 1105.01(i): Public Notification for Public Hearings.

C. In reviewing the application, the BZBA shall at a minimum, consider the review criteria of this section.

D. The BZBA may request that the applicant supply additional information that the Board deems necessary to review and evaluate the request for a variance.

E. In making its decision, the BZBA may approve, approve with modifications or supplementary conditions, or deny the application.

F. In making its decision, the BZBA shall make specific findings of fact based directly on the particular evidence presented that the reasons set forth in the application and as presented by the applicant during the public hearing, justify the approval, approval with modifications or supplementary conditions, or denial of the variance application that will make possible a reasonable use of the land, building, or structure.

G. Within sixty (60) days of the close of the public hearing, the BZBA shall render a decision on the variance application. The Zoning Inspector shall notify the appellant in writing of the decision of the BZBA.

H. If the BZBA fails to make a recommendation within the established timeframe, or an extended timeframe approved by the applicant, the application shall be deemed approved.

I. The decision of the BZBA shall become effective immediately.

J. In approving a variance, the BZBA may impose conditions on the approval, the proposed use, and the premises to be developed or used pursuant to such approval as it determines are required to be ensure compliance with the standards of this section and the purpose of this code. Any conditions established by the BZBA shall relate directly to the requested variance.

K. Any violation of the conditions of approval shall be a violation of this code, subject to the enforcement and penalties of Chapter 1129: Enforcement and Penalties.

(c) Review Criteria.

(1) Area or Dimensional Variance. Where an applicant is seeking an area or dimensional variance, the following factors shall be considered and weighed by the BZBA to determine if a practical difficulty exists that would justify approval of the variance. However, no single factor listed below may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts.

A. 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 exceptional irregularity, narrowness, shallowness or steepness of the lot, or proximity to non-conforming and inharmonious uses, structures or conditions;

B. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

C. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;

D. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;

E. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, trash pickup;

F. Whether special conditions or circumstances exist as a result of actions of the applicant

(actions of the applicant shall not include the purchase or acquisition of the property);

G. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

H. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance;

I. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district; and

J. Whether a literal interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this code.

(2) Use Variance. In order to grant a use variance, the BZBA shall determine that strict compliance with the terms of this code will result in unnecessary hardship to the applicant. The applicant must demonstrate such hardship by clear and convincing evidence that all of the following criteria are satisfied:

A. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located;

B. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;

C. The hardship condition is not created by actions of the applicant (actions of the applicant shall not include the purchase or acquisition of the property);

D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;

E. If there is an existing building on the lot, such building, due to its design, cannot be reasonably reused for a permitted use in the district;

F. The granting of the variance will not adversely affect the public health, safety or general welfare;

G. The variance will be consistent with the general spirit and intent of this code; and

H. The variance sought is the minimum that will afford relief to the applicant.

(d) Time Limit.

(1) The applicant shall submit a completed application for a zoning permit and start work within one (1) year of the date the variance was approved or the approval shall expire.

(2) Upon expiration of a variance approval, a new application, including all applicable fees, shall be required before a variance application will be reviewed.

(3) Upon written request, one extension of one (1) year may be granted by the Zoning Inspector if the applicant can show good cause for a delay.

(4) As part of the variance approval, the BZBA may authorize alternative time limits for zoning permit issuance based on the scale of the proposed development.

(e) Demolition Related to Variance Approval.

(1) The BZBA may grant a variance conditioned on the applicant demolishing an existing structure. Should the applicant fail to demolish the structure within thirty (30) days of completion of the structure, or within six (6) months from the issuance of the building permit, whichever occurs first, the variance shall be rescinded. The Building Inspector shall inspect the property and shall revoke any building permits issued pursuant to the order of the BZBA if the variance applicant fails to timely comply with all conditions set by the BZBA.

(2) Whoever fails to comply with the provisions of this section by not demolishing a structure within the time limits set forth herein shall be in violation of this code and subject to the penalties

established in Chapter 1129: Enforcement and Penalties.

(f) Appeals. Any person or entity claiming to be injured or aggrieved by any final action of the BZBA shall have the right to appeal the decision the court of common pleas as provided in ORC Chapters 2505 and 2506.

(Ord. 26-22. Passed 4-26-22.)

1105.09 ZONING PERMIT.

(a) Purpose. A zoning permit shall be required in accordance with the provisions of this section in order to ensure that proposed development complies with the standards of this code, and to otherwise protect the public health, safety, and general welfare of the citizens of the City.

(b) Applicability.

(1) No building or other structure shall be erected, moved, altered or added to, nor shall any building, structure or land be used or changed in use without a zoning permit issued by the Zoning Inspector. A change in tenancy or ownership of a residential dwelling unit shall be exempt from the zoning permit requirement.

(2) A zoning permit may be required for the establishment of certain temporary or accessory use as established in Chapter 1111: Accessory and Temporary Use Regulations.

(3) The use of vacant land shall require the issuance of a zoning permit.

(4) Unless otherwise specifically exempted in Section Chapter 1119: Signs, signs shall require a zoning permit.

(5) Zoning permits shall be issued only in conformity with the provisions of this code unless the application is subject to an approval by the BZBA or Planning Commission providing for additional standards, conditions, or modifications, in which case, the zoning permit shall be issued in conformity with the provisions of those approvals, as applicable.

(6) Failure to obtain a zoning permit shall be a violation of this code subject to the provisions of Chapter 1129: Enforcement and Penalties.

(c) Terminology and Simultaneous Review.

(1) For the purposes of this code, the zoning permit review shall be an administrative review that may be applied to permits or certificates of other names (e.g., sign permits, temporary use permits, etc.) if stated in this code. In such cases, the procedure of this section shall still apply.

(2) Where a zoning permit or similar administrative permit is required in addition to a building permit, such permits may be reviewed simultaneously under the building permit application.

(d) Zoning Permit Review Procedure. The review procedure for a zoning permit shall be as follows:

(1) Step 1 - Application. The applicant shall submit an application in accordance with Section 1105.01: Common Review Requirements, and with the provisions of this section.

(2) Step 2 - Zoning Inspector Review and Decision.

A. The Zoning Inspector may distribute the application to other staff members and other City departments to solicit comment on the zoning permit application.

B. For any zoning permit application for development or applicable activities in a special flood hazard area, the City Engineer shall be required to also review and make a decision on the zoning permit application as it relates to any flood-related regulations. If the City Engineer recommends denial based on flood-related regulations, such recommendation shall be made to the Zoning Inspector who shall not approve the application.

C. Within thirty (30) days after the application is determined to be complete, the Zoning Inspector shall make a decision either approving or denying the permit application. An extension on the decision may be granted with approval from the applicant. Where the proposed

development is within a special flood hazard area, the City Engineer shall be required to make a decision within the same timeframe.

D. Prior to finalizing approval of the application, the Zoning Inspector shall have the authority to provide comments to the applicant regarding necessary revisions to bring the application into full compliance. The application shall not be deemed formally approved until the applicant makes all of the appropriate changes and submits all necessary revised forms, maps, and documents to the Zoning Inspector.

(e) Review Criteria. In order to approve any zoning permit, the Zoning Inspector shall determine the following:

(1) The application complies with all applicable provisions of this code and the applicable zoning district; and

(2) The application complies with all approved plans, conditions, or other development approvals.

(f) Time Limit and Abandoned or Suspended Work.

(1) The applicant shall obtain an approved building permit, and begin construction, within one (1) year of the date the zoning permit is approved or the approval shall be revoked. The date of approval shall be the date the Zoning Inspector provides a signed copy of the permit to the applicant.

(2) For activities that do not require a building permit, the activity shall have been substantially begun within one (1) year of approval and is thereafter pursued to completion, as determined by the Zoning Inspector.

(3) The deadlines in paragraph (1) or (2) may be reduced if the work is mandated by this code or by order of the Zoning Inspector, Director of Public Service, or BZBA. In such cases, the deadline for construction shall be noted on the zoning permit.

(4) Time limits for permitted temporary uses and structures shall be as authorized in Section 1111.02: Temporary Uses and Structures. An approval of a zoning permit for a temporary use shall include the approved start and end dates for the proposed temporary use.

(5) If construction activities for which a zoning permit has been issued are abandoned or suspended for a period of six (6) months after the time of commencing the work, the zoning permit approval shall be revoked. Abandonment shall be defined as the lack of building activity or progress towards achieving the scope of work defined in the zoning permit.

(6) Upon written request, up to two extensions of six (6) months may be granted by the Zoning Inspector if the applicant can show good cause for a delay.

(7) The Zoning Inspector shall notify the application of the revocation of a zoning permit including notice that further work as described in the canceled permit shall not proceed unless and until a new zoning permit has been obtained or extension granted.

(8) Upon revocation of a zoning permit approval, a new application, including all applicable fees, shall be required before a new zoning permit application will be reviewed.

(9) The above time limits shall not apply if alternative time limits have been approved by Planning Commission or City Council as part of a site plan or Planned Residential Development approval.

(10) For the purposes of this section, construction is deemed to have begun when all necessary excavation and piers or footings for one or more principal buildings included in the plan shall have been completed.

(g) Revoking a Zoning Permit. A zoning permit shall be revocable, if among other things, the actual development activity does not conform to the terms of the application and permit granted

thereon. In the event of the revocation of a permit, an appeal may be taken to the BZBA in accordance with Section 1105.10: Appeals, of this code.

(h) Appeals. Any person or entity claiming to be injured or aggrieved by any final action of the Zoning Inspector shall have the right to appeal the decision to the BZBA as established in Section 1105.10: Appeals.

(Ord. 26-22. Passed 4-26-22.)

1105.10 APPEALS.

(a) Purpose. This section sets out the procedures to follow when a person claims to have been aggrieved or affected by an administrative decision made in the administration or enforcement of this code.

(b) Applicability.

(1) An appeal may be made regarding any administrative decision made in the administration and enforcement of this code including administrative decisions by the Zoning Inspector, Planning Commission, or Director of Public Service.

(2) An appeal may not be made to the BZBA when the Planning Commission is making a recommendation to City Council as part of a legislative action such as a code text or map amendment.

(c) Initiation. Appeals shall be initiated by the person aggrieved or affected by any order, decision, determination, or interpretation made by the authority having jurisdiction who is charged with the administration or enforcement of this code.

(d) Appeals Review Procedure. The review procedure for appeals shall be as follows:

(1) Step 1 - Submission of Appeal. Within thirty (30) days of the administrative order, decision, determination, or interpretation, the person appealing the decision or their authorized agent shall submit all required information to the Zoning Inspector in accordance Section 1105.01: Common Review Requirements.

(2) Step 2 - Forwarding of the Record to the BZBA. Upon receiving the written appeal of an administrative decision or determination, the Zoning Inspector shall transmit the written appeal with all papers, documents, and other materials related to the appealed decision or determination to the BZBA. This material shall constitute the record of the appeal.

(3) Step 3 - BZBA Review and Decision.

A. The BZBA shall hold a public hearing on the variance application at its next regularly scheduled meeting, or at a special meeting, after the appeal has been filed with the Zoning Inspector.

B. Notification of the public hearing shall be provided in accordance with Section 1105.01(i): Public Notification for Public Hearings.

C. In reviewing the appeal, the BZBA shall at a minimum, consider the review criteria of this section.

D. Within thirty (30) days of the close of the public hearing, the BZBA shall render a decision on the appeal. The Zoning Inspector shall notify the appellant in writing of the decision of the Board.

E. If the BZBA fails to make a recommendation within the established timeframe, or an extended timeframe approved by the applicant, the application shall be deemed approved.

F. The decision of the BZBA shall become effective immediately.

(e) Review Criteria. A decision or determination shall not be reversed or modified unless there is competent, material, and substantial evidence in the record that the decision or determination fails to comply with either the procedural or substantive requirements of this code.

(f) Stay. A properly submitted appeal shall stay all administrative proceedings by the City in furtherance of the action appealed, unless the Zoning Inspector certifies to the BZBA 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 BZBA or by a court of competent jurisdiction, for good cause shown.

(g) Appeals of BZBA Decisions. Any person or entity claiming to be injured or aggrieved by any final action of the BZBA shall have the right to appeal the decision the court of common pleas as provided in ORC Chapters 2505 and 2506.

(Ord. 26-22. Passed 4-26-22.)

1105.11 INTERPRETATION OF THE CODE.

It is the intent of this code that all questions of interpretation related to the administration and enforcement of this code shall be first presented to the Zoning Inspector, and that such questions shall be presented to the BZBA only on appeal from the decision of the Zoning Inspector. Such appeals shall be in accordance with Section 1105.10: Appeals.

(Ord. 26-22. Passed 4-26-22.)

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- ordinary, exceptional, or unique situations that were not caused by the applicant's act or omission
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- effective immediately
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- ord relief to the applicant
- order of the BZBA if the variance applicant fails to timely comply with all conditions set by the BZBA
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