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## **CHAPTER 1148**

### **PROCEDURES AND REQUIREMENT FOR APPEALS, VARIANCES. AND CONDITIONAL USE PERMITS**

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#### **1148.01 APPEALS .**

Appeals to the Zoning Board of Appeals concerning interpretation or administration of this Ordinance may be taken by any person aggrieved, or by any officer or bureau of the legislative authority of the City affected by any decision of the Zoning Inspector. Such appeal shall be taken within ten (10) days after the decision by filing with the Zoning Inspector and with the Board a notice of appeal specifying the grounds upon which the appeal is being taken as well as payment in full of any applicable fees (refer to Section 1145.17). The Zoning Inspector shall transmit to the Board all the papers constituting the record upon which the action appealed from is taken.

#### **1148.02 VARIANCES.**

The Zoning Board of 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 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.

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

#### **(a) Application and Standards for Variances.**

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

- (1) Name, address, and phone number of applicant(s).
- (2) Legal description of property.
- (3) Description of nature of variance requested.
- (4) A list of all property owners and their addresses who are within 200' of the affected property, contiguous to, or directly across the street and on either side of the properties across the street, and may have interest in the variance.

- (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 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.

**1148.03 PUBLIC HEARING BY THE BOARD OF ZONING APPEALS.**

The Zoning Board of Appeals shall hold a public hearing within forty-five (45) days after the receipt of an application for an appeal or variance from the Zoning Inspector or an applicant.

**(a) Notice of Public Hearing in Newspaper.**

Before holding the public hearing required in Section 1148.03, notice of such hearing shall be given by the Chairperson of the Zoning Board of Appeals in one (1) or more newspapers of general circulation in the City at least ten (10) 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 1148.03, written notice of such hearing shall be mailed by the Chairperson of the Zoning Board of Appeals by first class mail at least ten (10) days before the day of the hearing to property owners of adjoining parcels or parcels within two hundred feet (200') of affected property. The notice shall contain the same information as required of notices published in newspapers, as specified in Section 1148.03(a). The ten (10) day notice provisions of (a) and (b) may be waived by the applicant filing a waiver of notice from all the owners within 200' of affected property.

**(c) Action by the Zoning Board of Appeals.**

- (1) Within thirty (30) days after the public hearing required in Section 1148.03, the Zoning Board of Appeals shall either approve, approve with supplementary conditions as specified in Section 1148.03(d), or disapprove the request for appeal or variance.
- (2) The Zoning Board of Appeals shall further make a finding in writing 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 Zoning Inspector.

- (3) Appeals from Board decisions shall be made in the manner specified in Section 1148.01 and ORC 2505.07 et seq.

**(d) Supplementary Conditions and Safeguards.**

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 1145.15 of his Ordinance.

**1148.04 CONDITIONAL USES.**

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 **Title Five**, shall follow the procedures and requirements set forth in this section, inclusive of this Ordinance.

**(a) Contents of Application For Conditional Use Permit.**

An application for a Conditional Use Permit shall be filed with the Zoning Inspector 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 phone number of applicant.
- (2) Legal description 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 Planning Commission 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.

**(b) General Standards Applicable to All Conditional Uses**

In addition to the specific requirements for conditionally permitted uses as specified in this Ordinance, the Planning Commission 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 **Title Five**, 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 adequately served 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 provide adequately 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.

**(c) Specific Criteria for Conditional Uses.**

In granting any conditional use, the Planning Commission 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 1145.15.

(1) Public Hearing by the Planning Commission

The Planning Commission shall hold a public hearing within forty-five (45) days after the receipt of an application for a conditional use from the Zoning Inspector or an applicant.

A. Notice of Public Hearing in Newspaper

Prior to holding the public hearing required in Section 1148.04(c)(1), notice of such hearing shall be given by the Chairperson of the Planning Commission in one (1) or more newspapers of general circulation of the City, at least ten (10) 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. The ten (10) day notice may be waived by the applicant filing a waiver of notice from all the owners within 200' of affected property.

B. Notice to Parties of Interest

Prior to holding the public hearing required, written notice of such hearing shall be mailed by the Chairperson of the Planning Commission to property owners of adjoining parcels or parcels within two hundred feet (200') of affected property, by first class mail at least ten (10) days before the day of the hearing. The mailing list shall be supplied to the Chairperson of the Planning Commission 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 1148.04(c)(1)A.

(2) Action by the Planning Commission

A. Within forty-five (45) days after the public hearing required in Section 1148.04(c)(1), the Planning Commission shall either approve, approve with supplementary conditions as specified in Section 1148.04(c)(5), or disapprove the application as presented.

B. If the application is approved or approved with modification, the Planning Commission shall direct the Zoning Inspector to issue a Conditional Use Permit listing the specific conditions specified by the Planning Commission for approval. If the application is disapproved by the Planning Commission, the applicant may appeal to the Zoning Board of Appeals.

C. Appeals from decisions shall be made in the manner specified in Section 1148.01 and ORC 2505.07 et seq.

(3) 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 one (1) year of issuance of the permit or if such use ceases for more than two (2) years.

(4) Revocation of a Conditional Use Permit

Violation of the conditional use as approved shall be grounds for revocation of the Conditional Use Permit. The Planning Commission may revoke a conditional use permit but only after a public hearing is conducted according to procedures outlined in Section 1148.04(c)(1).

(5) Supplementary Conditions and Safeguards

In granting any conditional use, the Planning Commission 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 1145.15` of this Ordinance.