

ARTICLE VI

APPEALS AND VARIANCES

Section 6.01 Appeals

Appeals to the Planning and Zoning Commission concerning interpretation or administration of this Ordinance may be taken by any owner of property with a substantial interest in the matter who is adversely affected, or by a governmental officer, department, Commission, or bureau. Such appeal shall be taken within twenty (20) days after the date of the decision, by filing with the Zoning Enforcement Officer or with the Planning and Zoning Commission a notice of appeal specifying the decision of the Zoning Enforcement Officer from which the appeal is being taken.

Section 6.02 Variances

The Planning and Zoning Commission shall have the power to authorize, upon appeal in specific cases, filed as hereinafter provided, such variances from the provisions or requirements of the Ordinance as will not be contrary to the public interest. Such variances shall be granted only in cases of exceptional conditions, involving irregular, narrow, shallow, or steep lots, or other exceptional physical conditions of the land, whereby strict application of such provisions or requirements would result in practical difficulty and unnecessary hardship that would deprive the owner of the reasonable use of the land and buildings involved.

No variance from strict application of any provision of this Ordinance shall be granted by the Commission unless it finds that all the following facts and conditions exist:

- A. That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions specific to the land or building for which the variance is sought, and such conditions do not apply generally to land or building in the neighborhood or district in which the property is located.
- B. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- C. That such unreasonable and unnecessary hardship has not been created by the appellant.
- D. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

- E. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

Under no circumstances shall the Planning and Zoning commission grant an appeal or variance that would allow a use not permissible under this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

Section 6.03 Application for Variance and Appeals

Any person owning or having an interest in property, after being denied a zoning permit, may file an application to obtain a variance or appeal from the decision of the Zoning Enforcement Officer. An application for a variance or appeal shall be filed with the Zoning Enforcement Officer on a form as specified for that purpose. The Zoning Enforcement Officer shall forward a copy of the application to the Planning Zoning Commission;

The application for a variance or an appeal shall contain the following information:

- A. Name, address, and phone number of the applicant.
- B. Legal description of property.
- C. A map or drawing to approximate scale, showing the dimensions of the lot and any existing or proposed building.
- D. The names and addresses of all property owners within 200 feet, contiguous to, and directly across the street from the property, as appearing on the Darke County Auditor's current tax list.
- E. Each application for a variance or appeal shall refer to the specific provisions of this Ordinance which apply.
- F. A narrative statement explaining the following:
 - 1. The use for which variance or appeal is sought.
 - 2. Details of the variance or appeal that is applied for and the grounds on which it is claimed that the variance or appeal should be granted, as the case may be.
 - 3. The specific reasons why the variance or appeal is justified, according to Section 6.02 A-E.

G. A fee, as established by City Council.

Section 6.04 Supplementary Conditions and Safeguards

In granting any appeal or variance, the Planning and Zoning Commission may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the appeal or variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 3.11 of this Ordinance.

Section 6.05 Public Hearing by the Commission

The commission shall hold a public hearing for consideration of an appeal from a decision of the Zoning Enforcement Officer or variance unless a resolution is passed, by affirmative vote, declaring that a hearing is not needed in the specific case being considered.

Section 6.06 Notice of Public Hearing

Before holding the public hearing pursuant to Section 6.05, notice of such hearing shall be given in one (1) or more newspapers of general circulation in the City at least ten (10) days before the date of said hearing. The notice shall set forth the date, time and place of the public hearing, and the nature of the proposed appeal or variance. Written notice of such hearing shall be mailed by the Secretary of the Planning and Zoning Commission, by first-class mail, at least ten (10) days before the day of the hearing to all parties of interest. The notice shall contain the same information as required of notice published in newspapers as specified in Section 6.06. Parties of interest shall include owners of property within 200 feet from, contiguous to, and directly across the street from the property being considered. Failure of delivery of such notice shall not invalidate the findings of the Commission.

Section 6.07 Action by Planning and Zoning Commission

Within sixty (60) days after the first regular meeting of the Planning and Zoning Commission following submittal of an application filed pursuant to Section 6.03, the Commission shall either approve, approve with supplementary conditions as specified in Section 6.04, or disapprove the request for appeal or variance. If the application is approved, or approved with supplementary conditions, the Commission shall make a finding 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. If the request for appeal or variance is denied, the reasons for such denial shall be noted in writing. The commission shall transmit a written copy of its decision and findings to the Zoning Enforcement Officer, who shall forward such copy to the applicant by first class mail, or

in person.

Section 6.08 Appeals

After action is taken by the Planning and Zoning Commission, the applicant, or other party adversely affected by the action, may seek relief through the Court of Common Pleas. Such appeal must be filed within thirty (30) days from the date of the action by the Commission. A copy of the notice of appeal shall be served on the Secretary of the Planning and Zoning Commission by the aggrieved party within seven (7) days from the date of filing of the appeal.