

## **ARTICLE 22 BOARD OF APPEALS**

### **22.01 CREATION**

A Board of Appeals is created in accordance with Section 303.13 of the Ohio Revised Code.

### **22.02 MEMBERSHIP AND APPOINTMENT**

The Board shall consist of five (5) members appointed by the County Commission. The County Commission may remove any member of the Board for cause upon written charges and after public hearing. Vacancies shall be filled by the appointing authority for the unexpired term of the member affected. Board members shall serve a five (5) year term and shall be eligible for reappointment.

### **22.03 ORGANIZATION**

The Board of Appeals shall elect its own officers annually and shall adopt the rules necessary to the conduct of its affairs. Meetings shall be held at the call of the Chairman and at such other times as the Board may determine. Three (3) members of the Board of Appeals shall constitute a quorum for the conducting of business. The Chairman or, in his absence, the Acting Chairman may administer oaths and compel the attendance of witnesses. All meetings and records shall be open to the public.

### **22.04 OFFICIAL ACTION**

The Board of Appeals shall act by resolution or motion and shall keep minutes of its proceedings showing the vote of each member upon each question and indicating the absence or failure to vote of any member. The minutes shall also include a statement of the facts of each appeal considered by the Board and the applicable section or sections by this Resolution where applicable which the Board has considered in approving or disapproving any petition or other matter brought before the Board.

### **22.05 RIGHT OF PETITION OR APPEAL**

Application for a conditional use, change of use, variance, expansion of a non-conformity, and opinion shall be filed by the property owner or lessee of the property in question.

All applications for the above referenced items shall be accompanied by a site plan as required under Section 21.02. An appeal of a ruling of the Enforcing officer shall stay all proceedings unless the Enforcing officer certified that by reason of facts pertaining to the matter in question, a stay in his opinion would cause imminent peril to life and property. When such certification is made, proceedings shall not be stayed except by a restraining order granted by the Board of Appeals or by the Court of Common Pleas.

#### **22.06 FEE**

Each application for a variance, conditional use, change of use, expansion of a non-conformity, appeal, or opinion shall be accompanied by a fee to be determined by resolution of the Board of County Commissioners and under no conditions shall such sum or part thereof be refunded except as a result of administrative error.

#### **22.07 HEARING**

The Board of Appeals shall fix a reasonable time for the hearing of any application, petition, or appeal. It shall give at least ten (10) days notice of the time and place of such hearing to the Enforcing officer and to the owners of record of property within three hundred (300) feet of the premises in question, such notice to be delivered personally or by mail addressed to the respective owners at the address given on the last assessment roll and by one publication in one or more newspapers of general circulation in the county. Any party may appear at such hearing in person, by agent, or by attorney. The Board shall decide the application or appeal within a reasonable time.

#### **22.08 POWERS AND DUTIES**

The Board of Appeals shall have all the appropriate power and duties prescribed by law and by this Resolution. The Board shall have the following duties and powers:

A. Administrative Review: To hear and decide appeals only in such cases where it is alleged there is an error in any order, requirements, decision, or determination made by the Enforcing Officer in the enforcement of this Resolution. The concurring vote of a majority of those members of the Board present and voting shall be necessary to reverse any order, requirements, decision, or determination of the Enforcing Officer or to decide in favor of the applicant on any matter upon which the Board is required to pass under the terms of this Resolution.

B. Determination of Similar Uses: To determine if uses not specifically mentioned in this Resolution are similar to uses permitted within a district.

C. Determination of District Boundary Location: To determine the exact location of any district boundary if there is uncertainty as to exact location thereof. In making such determination the Board shall be guided by the provisions of section 4.03.

D. Conditional Use Permits: To hear and decide only such conditional uses as the Board of Zoning Appeals is specifically authorized to pass on under the terms of this Resolution or to deny Conditional Use Permits when not in harmony with the intent and purpose of this Resolution or the Comprehensive Master Plan. Requirements of 22.11, Regulation of Conditional Uses shall be met in securing a Conditional Use Permit.

E. Variances: To vary the strict application of any of the requirements of this Resolution in the case of exceptionally irregular, narrow, shallow or deep lots or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship, not economic in nature, that would deprive the owner of the reasonable use of the land or building involved but in no other case. The fact that another use would be more profitable is not a valid basis for legally granting a variance. No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance. No variance in the strict application of this Resolution shall be granted by the Board of Appeals unless and until the applicant submits, and the Board concurs with the following:

1. Conditions and Circumstances: 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.
2. Property Rights: That literal interpretation of the provisions of this Resolution would deprive the applicant of property rights commonly enjoyed by other properties in the same district under the terms of this Resolution.
3. Applicant Not at Fault: That the special conditions and circumstances do not result from the actions of the applicant, his agents, or prior property owners.
4. No Special Privilege: That granting the variance requested will not confer on the applicant any special privilege that is denied by this Resolution to other lands, structures, or buildings in the same district.
5. Harmony with Locality: That the variance requested shall not alter the essential character of the locality nor be in conflict with the Comprehensive Master Plan.

F. Procedure for Consideration of Petitions for Variance:

1. The Board of Appeals shall make a finding that the reasons set forth in the application are valid and justify the granting of the variance. The Board shall also determine if the variance is the minimum variance that will make possible the reasonable use of land, building, or structure.
2. Under no circumstances shall the Board of Appeals grant a variance which will permit a use which is not permitted in the district involved.

3. Conditions: The Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this Resolution. The Board of Appeals shall require a performance bond or irrevocable letter of credit to assure conformance to such conditions and safeguards as the Board may require.

4. Violation: Violation of such conditions and safeguards when such are made a party of the terms under which a variance is granted, shall cause the aforementioned performance bond to be forfeited or a draft to be drawn on the full amount of the letter of credit and shall be deemed in violation of this Resolution punishable under Section 21.07.

5. Public Hearings: Prior to taking action on a request for a variance, the Board of Appeals shall hold a public hearing and give notice to property owners as in Section 22.07 of this Resolution.

#### **22.09 WITHDRAWAL PROCEDURE**

Any application for a variance, conditional use, change of use, expansion of a non-conformity or appeal may be withdrawn up to seven (7) days before the scheduled public hearing thereon. Such request must be in writing, signed by the applicant and filed in the office of the Enforcing Officer holding such hearing. Such withdrawal shall void said application and cancel all future proceedings upon said application. If said withdrawal is not properly and timely filed, Article 23.03 of the Zoning Resolution shall apply to any future applications. In no case shall application fees be refunded, either in part or in whole, regardless of the proceedings or lack thereof, after the filing of any such application.

#### **22.10 APPLICATION FREQUENCY LIMITATIONS**

For any parcel of property or portion thereof only one of each of the following applications shall be filed for consideration during any consecutive six (6) month period unless a change of ownership takes place: Conditional Use Permit, Change of Use Permit and Variance.

#### **22.11 REGULATION OF CONDITIONAL USES**

The provisions of Section 22.11 of this Resolution apply to the location and maintenance of any and all conditional uses.

A. Purpose: In recent years the characteristics and impacts of an ever increasing number of new and unique uses, together with the broadening of numerous conventional uses, have fostered the development of more flexible regulations designed to accommodate these activities in a reasonable and equitable manner, while safeguarding both the property rights of all individuals and the health, safety, and morals of the community.

Toward these ends, it is recognized that this Resolution should provide for more detailed evaluation of each use conditionally permissible in a specific district with respect to such considerations as location, design, size, method(s) of operation, intensity of use, public facilities requirements, traffic generation, impact and effect upon surrounding properties. Accordingly, conditional use permits shall conform to the procedures and requirements of this Resolution.

B. Contents of Conditional Use Permit Application: Any owner, or agent thereof, of property for which a conditional use is proposed shall make an application for a conditional use permit by filing it with the Zoning Administrator. In addition to the site plan requirements of Section 21.02 such application, at a minimum, shall contain the following information:

1. Name, address and phone number of the applicant;
2. Legal description of the property or tax map of the property;
3. Zoning district;
4. Description of existing use;
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 areas, streets and traffic access ways, open spaces, refuse and service areas, utilities, signs, yards, landscaping features, and such other information as the Board may require;
7. A narrative statement discussing the compatibility of the proposed use with the existing uses of adjacent properties to include an evaluation of the effects on adjoining properties of such elements as traffic circulation, noise, glare, odor, fumes, and vibration;
8. A list containing the names and mailing addresses of all owners of property within three hundred feet (300') of the property in question;
9. A fee as established by Resolution;

C. General Standards for All Conditional Uses: In addition to the specific requirements for conditionally permitted uses in Section E, the Board 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 at the proposed location:

1. Is in fact a conditional use as established under the provisions of this Resolution and appears on the list of conditionally permitted uses adopted for the district involved;

2. Will be in accordance with the general objectives, or with any comprehensive plan and/or the Zoning Resolution;
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 served adequately 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, smoke, fumes, glare, or odors;
8. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares;
9. Will not result in the destruction, loss, or of a natural, scenic, or historic feature of major importance.

D. Invalidation of Conditional Use Permit:

1. For the purposes of this Resolution, a Conditional Use Permit shall cease to be valid at such time as the premises for which it was issued is no longer occupied by the holder of said permit or a change of ownership has occurred or until such use is terminated by the discontinuance of the use. A Conditional Use Permit shall also be immediately invalidated upon conduct in any manner not approved by the Board of Zoning Appeals.
2. A Conditional Use Permit shall expire in one (1) year after it is issued unless actual construction has taken place or is underway except as provided elsewhere in this Resolution. A Conditional Use Permit issued for other than construction shall expire in six (6) months after it issued unless the actual use established.
3. Exceptions to Change of ownership for a Conditional Use Permit: Change of ownership shall not invalidate a conditional use permit if upon application to the Zoning Administrator, the applicant can demonstrate that the activity or use is substantially similar and consistent with the previous conditional use activity and that no changes relative to the conditions, use or surrounding area have occurred since the activity was permitted. A conditional use permit fee as established by this resolution

shall be charged to the application. Should the zoning administrator deny the application for continuance of a conditional use, the applicant may appeal the decision or apply for another conditional use permit to the Board of Zoning Appeals as a separate action subject to the requirements of this resolution. Conditional use permits issued for a dwelling constructed as a second residence in the A-2, General Agricultural District shall be exempt from the change of ownership provisions.

E. Specific Criteria for Conditional Uses: The following are specific conditional use criteria and requirements for those uses conditionally permitted in this Resolution. Nothing in this shall prohibit the Board of Zoning from prescribing supplementary conditions and safeguards in addition to these requirements in accordance with Article 22

1. Mobile Home Parks: In every instance where approval has been granted by the Board of Appeals for the development of a mobile home park as a conditional use under Section 22.08, paragraph (4), all requirements of the Mobile Home Regulations of Miami County, Ohio shall be complied with:

2. Sexually Oriented Businesses: In every instance where a conditional use permit has been applied for in the I-1 Light Industrial district or I-2 General Industrial district for a Sexually Oriented Business, the applicant shall comply with the following conditions:

(a) No Sexually Oriented Business shall be established within 500 feet of any area zoned as a residential district or as an Office-Residential district. No Sexually Oriented Business shall be located within 500 feet of the right of way or any divided, limited access highway including but not limited to applicable portions of Interstate 75.

(b) No Sexually Oriented Business shall be established within a radius of 500 feet of any school, library, or teaching, educational facility, whether public or private, governmental or commercial, that is attended by persons under eighteen (18) years of age. The term "School" includes any school grounds.

(c) No Sexually Oriented Business shall be established within a radius of 500 feet of any park or recreational facility attended by persons under eighteen (18) years of age. The term park or recreational facility includes but is not limited to playgrounds, nature trail or recreational trails, swimming pools, reservoirs, athletic fields, basketball or tennis courts, pedestrian or bicycle paths, wildness areas, park districts or other similar public land.

(d) No Sexually Oriented Business shall be established within a radius of 500 feet of any permanently established place of religious services or worship which is attended by persons under eighteen (18) years of age or day care center of type A or B family day care home as defined by the Ohio Revised Code.

(e) No Sexually Oriented Business shall be established within a radius of 500 feet of any other Sexually Oriented Business or any of the following:

- (1) Establishments for the sale of beer or intoxicating liquor for consumption on the premises.
  - (2) Pawn shops.
  - (3) Pool or billiard halls.
  - (4) Pinball palaces, halls, or arcades.
  - (5) Dance halls or discotheques.
  - (6) Video arcades or establishments known by other descriptions but which provide video game and/or other games or entertainment attended or participated in by persons under eighteen (18) years of age.
  - (7) Tattoo parlors/body piercing operations, excluding ear-piercing.
- (f) Distances shall be measured by a straight line distance without regard for intervening structures from the property lines or zoning boundaries of any lot or parcel of land which includes or which is operated or used in connection with a building or in which a Sexually Oriented Business is located or in which any activity described referred to in this section is located. If property lines cannot be clearly established, measurements shall be taken from the closest exterior structural wall or section of wall enclosing the Sexually Oriented Business to the nearest property line or zoning boundary of the other use in question.
- (g) Advertisements, displays or other promotional materials posted or displayed at a Sexually Oriented Business shall not be shown or exhibited so as to be visible to the public from pedestrian sidewalks or walkways, or from other public or semi-public area.
- (h) All building openings, entries, windows, and the like, at any Sexually Oriented Business shall be located, covered, or screened in such a manner as to prevent any view into the interior from the exterior or any public or semi-public area, sidewalk or street. For new construction, the building shall be oriented so as to minimize any possibility of viewing the interior from public or semi-public areas, any sidewalk, or any street.
- (i) No screens, loudspeakers or sound equipment shall be used by a Sexually Oriented Business that can be seen, heard or discerned by the public from public or semi-public areas, any sidewalk, or any street.
- (j) Off-street parking shall be provided in accordance with Section 17.16 for similar uses, as well as all other standards for permitted uses within the I-1 and I-2 Zoning Districts as appropriate.

3. Replacement of Nonconforming Mobile Homes: Mobile Homes intended for residential occupancy which is classified as nonconforming structures or nonconforming uses at the effective date of adoption or amendment to this Resolution may be replaced with another similar sized mobile home provided the following conditions, are met:

(a) The mobile home is the principal unit on the lot and no other dwelling unit is on the lot.

(b) The mobile home can meet all other applicable lot area, set back, yard area requirement and other provisions of the zoning resolution.

(c) The owner or lessee of the property has furnished documentation that the existing mobile home can no longer be maintained or that the existing mobile home is a threat to the health, safety and welfare of its occupants.

(d) On lots with more than one principal dwelling unit, the replacement of a nonconforming mobile home shall be considered as a temporary use with the following additional provisions:

(1) The premises shall be occupied by a member of the family.

(2) The applicant shall renew the conditional use permit every 18 months with the zoning enforcement officer. No fee shall be charged for this renewal.

(3) Upon the termination of the use of the mobile home as a dwelling unit intended for occupancy for family members, the unit shall be removed from the premises within six months.

4. Home Occupations as a Conditional Permitted Use: A person may apply for a conditional use permit for a home occupation as permitted under the following criteria:

(a) Home Occupations in Residential Zoning Districts:

(1) The external appearance of the structure or structures in which the use is conducted shall not be altered. No internal or external alterations, construction, or reconstruction which detracts from the residential character of the premises accommodate the use shall be permitted.

(2) There shall be no outside storage of any kind related to the use. No display of products may be visible from the street. Sales of commodities not produced on the premises may be permitted provided that the commodities are specified in the application are directly and reasonably related to home occupations.

(3) Not more than 250 square feet of the gross floor area may be used for the purpose of conducting a home occupation. The home occupation shall be limited to one room.

(4) No equipment, process, materials, or chemicals shall be used which create offensive noise, vibration, smoke, dust, odor, heat, glare, x-rays, radiation, or electrical disturbances.

(5) No additional parking demand shall be created; no more than three receiver vehicles of such service shall be allowed at any one time.

(6) Not more than one unanimated, nonilluminated sign no larger than one square foot shall be allowed on the premises.

(7) No person who is not a resident of the premises may participate in the home occupation as an employee or volunteer.

(8) Auto repair home occupations shall be prohibited in residential districts.

(b) Home Occupations in A-1, A-2, F-1 Zoning Districts:

(1) No internal or external alterations, construction or reconstruction of the premises to accommodate the use shall be permitted which detracts from the residential and agricultural character.

(2) Outside storage, if approved by the Board of Zoning Appeals, shall be on a limited basis to the rear yard area of the property. Such as storage area, if approved, shall be limited to those activities as specified in the application; shall not be visually obtrusive or undesirably noticeable from the street or adjacent properties. The Board may prescribe appropriate screening to further lessen the visual impact of outside storage.

(3) Products on the exterior of accessory buildings, storage facilities and the premises may be displayed on a temporary basis from sunrise to sunset but shall not detract from the residential character of the place. The application shall specify the type of products to be displayed and where they will be displayed on the premises.

(4) Not more than twenty-five per cent (25%) of the gross floor area of the living area on the ground floor shall be devoted to the use. Use and size of accessory buildings may be permitted provided the application so specifies and it is approved by the Board of Zoning Appeals.

(5) No equipment, process, materials, or chemicals shall be used which create offensive noise, vibrations, smoke, dust, odor, heat, glare, x-rays, radiation or electrical disturbances.

(6) No additional parking demand shall be created; no more than three receiver vehicles of such service shall be allowed at any one time.

(7) Not more than one unanimated, non-illuminated sign no larger than two (2) square feet shall be allowed on the premises.

- (8) A person who is not a resident of the premises may not participate in the home occupation as an employee or volunteer.