

**APPLICATION TO
BOARD OF ZONING AND BUILDING APPEALS
(Ch.1246, GCO)**

Project _____ Date: _____
Location/Address _____
Applicant _____ Ph: _____
Address _____ Fax: _____
_____ Email: _____

Nature of Request (Check One):

- _____ Variance from Zoning Code (Setbacks; Height; Lot coverage; Etc)
_____ Variance from Building Code (Code requirement: Product or material; Etc.)
_____ Appeal of Building Inspector's interpretation of Code requirement

Please explain your situation and the reason(s) for your request. _____

Fees (Must be paid at the time of application submission)

Same project; Non-refundable

\$ 25.00 (1st submission)

\$100.00 (2nd submission)

\$250.00 (3rd submission)

Applicant's Signature _____

Village of Grafton, Ohio

Ph: 440-926-2401

Fax: 440-926-9018

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Grafton, OH Code of Ordinances

PART TWELVE - PLANNING AND ZONING CODE**TITLE SIX - Zoning****CHAPTER 1246 Board of Zoning and Building Appeals** **CHAPTER 1246****Board of Zoning and Building Appeals****1246.01 Purpose.****1246.02 Organization and procedure.****1246.03 Governing guidelines.****1246.04 Jurisdiction and powers.****1246.05 Procedure and requirements for appeals and variances.****1246.06 Appeals; fees; stay of proceedings.****1246.07 Application and standards for variances.****1246.08 Requirements for granting variances.****1246.09 Conditions imposed.****1246.10 Lapses of variances.****1246.11 Public hearing by the Board.****1246.12 Notice of public hearing.****1246.13 Notice to parties in interest.****1246.14 Decisions of the Board.****1246.15 Duties of officials on matters of appeal.****1246.16 Appeal to courts.****CROSS REFERENCES**Board of Zoning and Building Appeals - see CHTR. Art. VII

Administrative board; powers and duties - see Ohio R.C. 713.11

Notice and hearing on municipal zoning regulations - see Ohio R.C. 713.12

 1246.01 PURPOSE.

The purpose of the Board of Zoning and Building Appeals shall be to decide any issue involving the interpretation of the provisions contained in this Zoning Code, to grant variances from the strict letter of the Code in instances of unnecessary hardship, and to authorize conditional uses as herein provided.

(Ord. 01-014. Passed 7-17-01.)

 1246.02 ORGANIZATION AND PROCEDURE.

(a) Appointment. The Board of Zoning and Building Appeals shall be composed of five members, all of whom are residents of the Village. Members shall be appointed by the Mayor for a period of three years. The terms shall be arranged so that the term of one member shall expire each year. Should any vacancy on the Board occur for any reason, the Mayor shall appoint a successor to serve the unexpired term. The Mayor shall have the right to remove any members of the Board with due cause.

(EDITOR'S NOTE: Charter Article VII, Section 1 was amended November 8, 2011, so that appointments to the Board of Zoning and Building Appeals are for a period of four years.)

(b) Organization and Rules. The Board shall organize annually and elect a Chairman, Vice-Chairman, and Secretary from its

membership. The Secretary need not be a member of the Board. The Board shall adopt rules as may be necessary to carry into effect the provisions of this Zoning Code and to exercise the powers and jurisdiction conferred upon it by the Code.

(1) The Chairperson shall preside at all meetings of the Board. He or she shall decide on all points of order and procedure, unless otherwise directed by a majority of the Board. The Chairperson may appoint committees deemed necessary to carry out the business of the Board. The Chairperson may administer oaths and compel the attendance of witnesses. The Chairperson's signature shall be the official signature of the Board, and shall appear on all decisions as directed by the Board.

(2) The Vice-Chairperson shall serve in the absence of the Chairperson. He or she shall have all the powers and responsibilities of the Chairperson during his/her absence, disability, or disqualification.

(3) The Secretary shall keep minutes of all meetings and shall be responsible for all official correspondence of the Board.

(c) Meetings. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. All meetings shall be open to the public.

(d) Quorum. All actions of the Board shall be taken by resolution, the vote of each member being recorded. The majority of the Board shall constitute a quorum to do business, and the concurring vote of three members shall be necessary to reverse any order, requirement, decision, or determination of the Responsible Authority. No member of the Board shall vote on any matter in which he or she is personally or financially interested.

(e) Minutes and Records. The Secretary of the Board shall keep minutes of its proceedings, showing the vote of each member upon each question; or if absent or failing to vote, indicating such fact; and shall keep records of its examinations and other official action, all of which shall be certified correct and filed in the Village Hall and shall be a public record.

(f) Witnesses and Oaths. The Board shall have the power to subpoena and require the attendance of witnesses, administer oaths, and compel testimony and the production of books, papers, and other evidence pertinent to any issue before the Board.

(g) Department Assistance. The Board may call on the Village departments or consultants for assistance in the performance of its duties, and such departments shall render assistance to the Board as may be required. In addition, the Planning Commission may make an analysis and present a report on any matter before the Board. Such report shall be considered by the Board at the time of hearing on the matter.

(h) Compensation. The Board shall be compensated for each meeting attended at a rate to be determined by the Village Council. (Ord. 01-014. Passed 7-17-01.)

1246.03 GOVERNING GUIDELINES.

(a) The Board of Zoning and Building Appeals shall be governed

by the provisions of all applicable State statutes, local laws, ordinances, and rules set forth herein.

(b) The Board shall become familiar with all enacted ordinances and laws of the Village under which it may be expected to act, as well as with applicable State enabling legislation.

(c) The Board shall uphold the Zoning Code and official Zoning Map as adopted and shall serve primarily as a judicial review in the performance of its duties.

(d) The Board shall become familiar with the community goals, desires, and policies as expressed in an adopted Comprehensive Plan and the proposals set forth therein. All decisions shall be guided by such Plan and relief only granted which will insure that the goals and policies of the Plan will be preserved, substantial justice is done, and the public interest is protected. Through the performance of its duties, the Board may not act as a legislative body; or through interpretation, the granting of variances, or the setting of conditions, alter the basic intent of the Zoning Code to be generally and equally applicable to all persons covered by a zoning district.

(Ord. 01-014. Passed 7-17-01.)

1246.04 JURISDICTION AND POWERS.

The Board of Zoning and Building Appeals shall operate so as to carry into effect the powers and jurisdiction conferred upon it as follows:

(a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Responsible Authority in the enforcement of this Zoning Code.

(b) To hear and decide upon application for variances under the terms provided in this Code.

(c) To interpret the provisions of the Zoning Code or Zoning Map where there is doubt as to meaning or application. The Board shall have the specific power to:

(1) Interpret the precise location of the boundary lines between zoning districts.

(2) Interpret the classification of a use which is not specifically mentioned as a part of the use regulations of any zoning district so that it conforms to a comparable conditionally permitted, permitted, or prohibited use in accordance with the intent and purpose of each district.

(d) To hear and decide whether or not a nonconforming use should be granted extensions, additions, or reconstruction (in case of a 50% or more loss), or change in use to another nonconforming use.

(e) To exercise such other powers as may be granted to the Board by this Zoning Code, amendment thereto, or by the general laws as set forth in the Ohio Revised Code as amended.

(f) The Board shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms or intent of this Zoning Code, but does have power to act on those matters where the Zoning Code provides for judicial review, interpretation, or variance requests as defined in this chapter.

(g) Grant variances from the strict application of the provisions of

the sign code, as set forth in Chapter 1288, in regard to an existing nonconforming sign or a new sign to be installed, erected, constructed or painted, if the Board finds that requiring strict compliance with the sign code may impose an undue hardship and that the granting of the variance will not depreciate or damage neighboring property, will not create a safety hazard and will not be contrary to the requirements of the sign code.

(Ord. 01-014. Passed 7-17-01.)

1246.05 PROCEDURE AND REQUIREMENTS FOR APPEALS AND VARIANCES.

Appeals and variances shall conform to the procedures and requirements of this Zoning Code.

(Ord. 01-014. Passed 7-17-01.)

1246.06 APPEALS; FEES; STAY OF PROCEEDINGS.

(a) Appeals. Appeals to the Board of Zoning and Building Appeals concerning interpretation or administration of this Zoning Code may be taken by any person aggrieved or by any officer or bureau of the legislative authority of the Village affected by any decision of the Responsible Authority. Such appeal shall be taken within 20 days after the decision by filing with the Responsible Authority and with the Board a notice of appeal specifying the grounds upon which the appeal is being taken. The Responsible Authority shall transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(b) Fees. See Section 1242.11.

(c) Stay of Proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the Responsible Authority from whom the appeal is taken certifies to the Board after the notice of appeal is filed with him or her, that by reason of facts stated in the application, a stay would, in his or her opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board or by a court of record on application, with a written notice to the Responsible Authority from whom the appeal is taken.
(Ord. 01-014. Passed 7-17-01.)

1246.07 APPLICATION AND STANDARDS FOR VARIANCES.

A variance from the terms of this Zoning Code shall not be granted by the Board of Zoning and Building Appeals unless and until a written application for a variance is submitted to the Responsible Authority and the Board, containing:

- (a) Name, address, and phone number of applicants.
- (b) Legal description of property.
- (c) Description of nature of variance requested.
- (d) A narrative statement demonstrating that the requested variance conforms to the following standards: 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.

- (1) That a literal interpretation of the provisions of this Zoning

Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Code.

(2) That special conditions and circumstances do not result from the actions of the applicant.

(3) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Zoning Code, to other lands, structures, or buildings in the same district.

(Ord. 01-014. Passed 7-17-01.)

1246.08 REQUIREMENTS FOR GRANTING VARIANCES.

(a) Variances may be granted by the Board of Zoning and Building Appeals where the strict application of any provision of this Zoning Code would result in peculiar and exceptional difficulties or undue hardship to the property owner. A request for a variance may be made to the Board through the Responsible Authority by an aggrieved property owner.

(b) A variance from the provisions or requirements of this Zoning Code shall not be authorized by the Board unless it finds that all the following facts and conditions exist:

(1) That unnecessary hardships would result from the literal enforcement of the provisions of this Zoning Code. Alleged hardships, such as theoretical loss or limited possibilities of economic advantage, shall not be considered real hardships. A hardship based on conditions created by the owner shall not be considered a sufficient hardship for the granting of a variance. It must be demonstrated that peculiar and special hardships exist which apply only to the property in question and are separate and distinct from the general conditions pertaining throughout the district.

(2) That there are unique physical circumstances or conditions applying to the property in question, such as irregularity, narrowness, or shallowness of lot size or shape, exceptional topographical, or other physical conditions.

(3) 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 this Zoning Code and that authorization of a variance is, therefore, necessary to enable the reasonable use of the property.

(4) That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity, and that the granting of such variance will not be injurious to persons working or residing in the neighborhood.

(5) That the granting of such variance will not be contrary to the public interest (health, safety) or the intent and purpose of this Code and other adopted plans.

(6) That such variance will not permit the establishment within a district of any use other than those permitted by right within that district, or any use for which a conditional permit is required.

(7) That such variance may not be construed to mean a change of use, but shall mean only a variation or modification from the strict provisions of this Code.

(8) That such variance, if granted, is the minimum modification that will make possible the reasonable use of the land, building, or structure.

(9) That in no instance shall a variance be considered for the following reasons:

- A. Presence of nonconformities in the zoning district.
- B. Previous variances granted in the zoning district.
- C. Uses in adjoining zoning districts.
- D. The applicant's belief that the intended use would be permitted upon his/her purchase of the land.
- E. The character standing of the applicant.
- F. Hardship being demonstrated beyond the context of zoning; for example, economics.

(c) Variations to nonconforming uses and buildings: The Board shall have no powers to authorize, as a variance, the establishment of a nonconforming use or extensions of or changes in nonconforming uses. Regulation of existing nonconforming uses are provided for in Chapter 1252.

(Ord. 01-014. Passed 7-17-01.)

1246.09 CONDITIONS IMPOSED.

The Board of Zoning and Building Appeals shall have the power to impose additional conditions and safeguards other than those stated in the Zoning Code when granting variances. Such additional conditions shall be reasonable and necessary to promote and preserve the public safety, general welfare, and economic viability of the neighborhood and community, and shall be imposed solely for the purpose of minimizing the effect of the variance on surrounding property and the community as a whole. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Code and punishable under Section 1242.13.

(Ord. 01-014. Passed 7-17-01.)

1246.10 LAPSES OF VARIANCES.

A variance, once granted, shall not be withdrawn or changed unless there is a change of circumstances, or if after the expiration of nine months no construction has taken place in accordance with the terms and conditions for which such variance was granted. Thereafter, the variance shall be deemed null and void without notification to the applicant or variance holder, and all regulations governing the premises in question shall revert to those in effect before the variance was granted.

(Ord. 01-014. Passed 7-17-01.)

1246.11 PUBLIC HEARING BY THE BOARD.

The Board of Zoning and Building Appeals shall hold a public hearing within 20 days after the receipt of an application for an appeal or variance from the Responsible Authority or an applicant.

(Ord. 01-014. Passed 7-17-01.)

1246.12 NOTICE OF PUBLIC HEARING.

Before holding the public hearing, notice of such hearing shall be given in one or more newspapers of general circulation of the Village

at least ten days before the date of such hearing. The notice shall set forth the time and place of the public hearing and the nature of the proposed appeal or variance.

(Ord. 01-014. Passed 7-17-01.)

1246.13 NOTICE TO PARTIES IN INTEREST.

Before holding the public hearing, notice of such hearing shall be mailed by the Responsible Authority of the Board of Zoning and Building Appeals by first-class mail, at least ten days before the day of the hearing, to all abutting property owners. The notice shall contain the same information as required of notices published in newspapers as specified in Section 1246.12.

(Ord. 01-014. Passed 7-17-01; Ord. 12-023. Passed 5-1-12.)

1246.14 DECISIONS OF THE BOARD.

(a) The Board of Zoning and Building Appeals shall decide all applications for variances and appeals, and changes in nonconforming uses within 30 days after the final hearing thereon. The decision shall state any conditions and safeguards necessary to protect the public interest.

(b) The applicant shall be notified in writing of the Board's decision and the findings of fact which were the basis for the Board's determination.

(c) The Board may reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination made by the Responsible Authority on an appeal.

(d) A certified copy of the Board's decision, including all terms and conditions, shall be transmitted to the Responsible Authority and shall be binding upon and observed by him or her. The Responsible Authority shall fully incorporate these terms and conditions in the permit to the applicant whenever a permit is authorized by the Board.

(e) All findings and decisions shall be clearly set forth in the minutes of the Board.

(f) In rendering a decision, the Board should show that:

(1) It has considered and evaluated all available information and evidence.

(2) It has heard all parties in question.

(3) Any personal knowledge the Board may have of the subject under question has been taken into account.

(Ord. 01-014. Passed 7-17-01.)

1246.15 DUTIES OF OFFICIALS ON MATTERS OF APPEAL.

It is the intent of this Zoning Code that all questions of interpretation and enforcement shall first be presented to the Responsible Authority, and that such questions shall be presented to the Board of Zoning and Building Appeals only on appeal from the decision of the Responsible Authority, and that recourse from the decision of the Board shall be to the courts as provided by Section 1246.16 and Ohio R.C. Ch.713. It is further the intent of this Zoning Code that the duties of Council in connection with this chapter shall not include hearing and deciding questions of interpretation and enforcement that may arise; these being the powers of the Board. Under this Zoning Code, Council shall have only the duties of

considering, adopting, or rejecting proposed amendments or the repeal of all or part of this Zoning Code, as provided by law and of establishing a schedule of fees and charges. If in the course of carrying out the intent of this chapter, and after review of all appeal cases brought before it, the Board finds a series of similar irregularities or inequities, it shall be incumbent upon the Board to inform Council and the Planning Commission of these inadequacies in order that the Zoning Code or Zoning Map may be appropriately amended. Nothing in this chapter shall prevent a member of Council from appealing the decision of the Zoning Board in a court of law. (Ord. 01-014. Passed 7-17-01.)

 1246.16 APPEAL TO COURTS.

A person aggrieved by a decision of the Board of Zoning and Building Appeals may appeal to the Court of Common Pleas of Lorain County.

(Ord. 01-014. Passed 7-17-01.)

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