

CHAPTER 1242
Administration, Enforcement and Penalty

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| 1242.01 | Zoning permit required. | 1242.05 | Powers and duties of Planning Commission and Council. |
| 1242.02 | Application for zoning permit; issuance of building permits; time limits. | 1242.06 | Board of Appeals. |
| 1242.03 | Compliance of permits and licenses with Zoning Code. | 1242.07 | Fees. |
| 1242.04 | Duties of the Zoning Administrator. | 1242.99 | Penalty. |

CROSS REFERENCES

Establishment and appointment of Board of Appeals - see CHTR. §69; Ohio R.C. 713.11

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

Violation of zoning ordinance may be enjoined - see Ohio R.C. 713.13

Compliance generally - see P. & Z. 1240.04

Prohibited uses - see P. & Z. 1240.06

Amendments - see P. & Z. 1240.08

Definitions - see P. & Z. 1240.09

1242.01 ZONING PERMIT REQUIRED.

A zoning permit shall be required and shall be obtained from the Zoning Administrator by the property owner or his or her agent:

(a) Prior to any change of use of any structure or land, even if the changed use is of the same general type as its predecessor;

(b) Prior to the reoccupation or reuse of any nonresidential lot or structure;

(c) Prior to the occupancy of, or use of, any newly erected or constructed building or structure, or part thereof; or prerequisite to the continued occupancy of a newly altered, reconstructed, enlarged or relocated building or structure.

The zoning permit shall state that the completed improvement or relocation has been inspected by the Zoning Administrator and building inspectors and others having jurisdiction and has been found to be in compliance with the provisions of this Zoning Code and other applicable regulations. Upon written request from the owner or tenant,

the Zoning Administrator shall issue a zoning permit for any building, structure or premises existing on the effective date of this Zoning Code, certifying, after inspection, the extent and kind of use made of the building, structure or premises and whether such use conforms to the provisions of this Zoning Code.
(Ord. 81-11. Passed 7-6-81.)

1242.02 APPLICATION FOR ZONING PERMIT; ISSUANCE OF BUILDING PERMITS; TIME LIMITS.

(a) Prior to the beginning of construction pertaining to the erection, construction, reconstruction, moving, alteration or addition to any building or structure, a zoning permit shall be secured from the Zoning Administrator by the property owner or his or her agent.

(b) Issuance of a zoning permit shall precede the issuance of a building permit. A zoning permit shall be considered valid for purposes of obtaining a building permit for a period of six months from the date of issuance by the Zoning Administrator. If no building permit has been granted within this period, another zoning permit must be applied for prior to issuance of a building permit.

(c) Every application for a zoning permit shall be accompanied by a scale drawing in duplicate showing the actual shape and dimensions of the lot to be built upon or to be changed in its use, in whole or in part; the location, size and height of any building or structure to be erected or altered; off-street parking; the existing and intended use of each building or structure or part thereof; the number of families or housekeeping units the building is designed to accommodate; and, when no buildings are involved, the location of the present use and proposed use to be made of the lot and such other information with regard to the lot and neighboring lots as may be necessary to determine and provide for the enforcement of this Zoning Code. All dimensions shown on submitted plans shall be based upon an actual survey. The lot and the location of the building thereon shall be staked out on the ground before construction is started. One copy of such plans shall be returned to the owner when such plans have been approved by the Zoning Administrator, together with such zoning permit as may be granted.

(d) Building permits issued locally, or by other agencies as authorized by Yellow Springs, shall be granted with the stipulation that work permitted shall be substantially under way within one year of issuance and complete within two years of issuance. If the work described in any building permit has not been substantially completed within two years of the date of issuance thereof, such permit shall expire and be revoked by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until appropriate new permits have been obtained or extensions have been granted.
(Ord. 81-11. Passed 7-6-81.)

1242.03 COMPLIANCE OF PERMITS AND LICENSES WITH ZONING CODE.

All departments, officials and public employees of the Village vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Zoning Code and shall not issue a permit for any use, building or purpose in conflict with the provisions of this Zoning Code. Any permit or license issued in conflict with the provisions of this Zoning Code shall be null and void.
(Ord. 81-11. Passed 7-6-81.)

1242.04 DUTIES OF THE ZONING ADMINISTRATOR.

The Zoning Administrator shall administer and enforce this Zoning Code, including the following:

- (a) Strictly interpret the provisions of this Zoning Code (text and Map). In interpreting and applying the provisions of this Code, they shall be held to be the minimum requirements for the promotion of health, safety, convenience and the general welfare.
- (b) Receive and process applications for zoning permits where new construction is to be carried out.
- (c) Receive and process applications for zoning permits, as required above, where no new construction is to be carried out or where new construction has just been completed.
- (d) Conduct inspections of buildings, structures and uses of land to determine compliance with this Zoning Code, and, in the case of any violation, notify in writing the person or persons responsible, specifying the nature of the violation and ordering appropriate corrective action.
- (e) Maintain in current status, for inspection by the public, the Official Zoning District Map.
- (f) Maintain permanent and current records required by this Zoning Code, including zoning permits and such other official records as are not the specific responsibility of the Clerk of Council, and prepare and submit such reports as are necessary for communication of development data to official Village and outside agencies.
- (g) Perform as technical staff to the Planning Commission and the Board of Appeals.

(Ord. 81-11. Passed 7-6-81.)

1242.05 POWERS AND DUTIES OF PLANNING COMMISSION AND COUNCIL.

(a) The Planning Commission and its staff shall carry on a continuous review of the effectiveness and appropriateness of this Zoning Code and recommend to Village Council such changes or amendments as it feels would be appropriate.

(b) The Village Council is empowered to enact amendments to this Zoning Code following recommendations of the Planning Commission and following the procedure outlined in Section 1240.08.

(c) The Village Council shall favorably consider an application for a zoning text amendment, a change of a zoning district on the Official Zoning District Map or a reclassification of property, only if the request for a change of zoning can be justified on one of the following grounds:

- (1) A manifest error in this Zoning Code;
- (2) To conform to, or to more appropriately conform to, the Yellow Springs Comprehensive Development Plan and its relative priorities;
- (3) A substantial change in area conditions;
- (4) A legitimate requirement for additional land area for the particular zoning district.

(d) In the case of a change to the Official Zoning District Map, the Village Council shall not consider favorably any petition which would result in a total contiguous area (separated only by streets and excluding the area of streets) of less than the following:

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|------------------------------------|----|-------|
| Agricultural District | 10 | acres |
| Conservation District | 10 | acres |
| Residence "A-1" District | 10 | acres |
| Residence "A" District | 10 | acres |
| Residence "B" District | 10 | acres |
| Residence "C" District | 3 | acres |
| Office/Research District | 3 | acres |
| Central Business District | 3 | acres |
| General Business District | 4 | acres |
| Light Industrial District | 3 | acres |
| Educational Institutional District | 5 | acres |
| Mixed Commerce District | 3 | acres |

(e) The Planning Commission shall render decisions on conditional use applications. Appeals of Planning Commission decisions shall be filed within twenty days of being rendered and shall be heard by Council.

(f) Decisions by the Planning Commission on conditional use or other zoning applications shall be heard in accordance with the following procedures:

- (1) Applications made to the Planning Commission shall be in writing, on a form approved by the Commission, and shall be filed with the Zoning Administrator at least eighteen days before the next regularly scheduled meeting at which they are to be heard. Accompanying the application must be a required hearing fee and a clear description and scale drawing of the land involved and such other material as the Commission may determine appropriate.
- (2) When an application has been filed in proper form with the required data, the Secretary of the Planning Commission shall publish notice in a newspaper of general circulation in the Village announcing at least

seven days in advance that the next meeting of the Planning Commission will be a public hearing on a conditional use, PUD or other zoning application for a specific location.

- (3) A temporary sign of six square feet shall be posted on the property involved in these requests at least ten days prior to the scheduled hearing. The content of the sign shall include:
 - A. The specific request being made, that being a conditional use, a rezoning, etc.;
 - B. The date of the scheduled public hearing;
 - C. The location of the hearing; and
 - D. Where additional information can be obtained regarding the request.These signs shall be removed no later than three days following the hearing.
- (4) The applicant may appear at the public hearing in person or by agent or be represented by an attorney.
- (5) The Planning Commission shall adopt rules for zoning application public hearings that are consistent with this Zoning Code.
- (6) The Planning Commission shall keep minutes of its proceedings showing the action of the Commission and the vote of each member upon each question or, if absent or failing to vote, indicating such fact. The Commission shall act by resolution. Barring unforeseen equipment failures, each hearing shall be tape recorded, and the tape shall be kept for six months before erasure. Minutes and the records of all official actions shall be filed with the Clerk of Council and kept as a public record.
- (7) The concurring vote of three Planning Commission members shall be necessary to approve a conditional use, PUD or related zoning application.
- (8) Before a zoning application is approved, the Commission shall make an affirmative finding that specific provisions of controlling sections of the Zoning Code have been met or exceeded.

(g) Appeals to Council of Board of Appeals or Planning Commission decisions shall be filed within twenty days of being rendered by either body. Appeals heard by Council on decisions of the Board of Appeals or the Planning Commission shall be for the purpose of determining the adequacy of subordinate public body hearings, and may be brought by any property owner, tenant, governmental officer, department, board or bureau affected.

- (1) If hearings and records transmitted by the Board of Appeals or the Planning Commission are deemed adequate, its decision shall be affirmed.

- (2) Council shall not hear appeals de novo, but shall base its deliberations on the written record of subordinate hearings, except that Council may question any of the parties represented in the record.
- (3) The record shall include all materials submitted by the appellant, by the Zoning Administrator, by any other reviewing body and by the public, together with the record of public hearings. The record of official public hearings shall consist of a transcription of the tape recording, at the appellant's expense, plus the written minutes and all attachments thereto.
- (4) Fees paid in accordance with a Council approved schedule for such appeal shall include a nonrefundable filing fee and a refundable fee that is forfeited upon Council affirmation of the decision of a subordinate body.
- (5) The burden shall be on the appellant to convince Council that there has been an error in a previous decision because of procedural inadequacy (broadly construed to include failure to adequately consider an important argument presented to a subordinate review body by the appellant). Council shall act as a check on subordinate decisions and as an additional local safeguard of due process.
- (6) Council shall dispose of an appeal by affirming the decision of the subordinate body, or remanding the decision back to the body appealed from, upon the concurring vote of three members, for reconsideration based on specific inadequacies.
- (7) Appeals hearings heard by Council shall be open to the public and announced in a newspaper of general circulation at least fourteen days before hearing.

(Ord. 81-11. Passed 7-6-81; Ord. 94-9. Passed 6-6-94; Ord. 97-07. Passed 7-7-97; Ord. 2003-9. Passed 7-7-03; Ord. 2003-14. Passed 10-6-03.)

1242.06 BOARD OF APPEALS.

(a) Appointment; Meetings; Quorum. A Board of Appeals shall be appointed in accordance with Section 69 of the Village Charter and shall have the powers as hereinafter indicated. Members of the Board at the date of passage of this Zoning Code may continue to serve the full terms of their original appointments.

- (1) The Board of Appeals shall adopt rules and regulations consistent with this Zoning Code. Meetings of the Board shall be held at such times as the Board may determine. There shall be a fixed place of meeting and all meetings shall be open to the public.
- (2) The Board shall keep minutes of its proceedings showing each action of the Board and the vote of each member upon each question or, if absent or failing to vote, indicating such fact. The Board shall act by resolution. Barring unforeseen equipment failures, each hearing shall be tape recorded, and the tape shall be kept for six months before erasure. Minutes and the records of all official actions shall be filed with the Clerk of Council and kept as a public record.

(3) The presence of four members shall constitute a quorum. The concurring vote of three members of the Board shall be necessary to reverse an order, requirement, decision or determination of the Zoning Administrator, to decide in favor of the applicant on any matter upon which it is required to pass by this Zoning Code, or to grant a variation from the requirements of this Zoning Code.

(b) Applications and Appeal Procedures.

(1) All applications and appeals made to the Board shall be in writing, shall be on a form approved by the Board and shall be filed with the Zoning Administrator at least fourteen days before a meeting reserved for the hearing of appeals. Each application for appeal shall refer to the specific provision of this Zoning Code involved and shall set forth exactly the interpretation that is claimed, the use for which special exception is sought, a clear description and scale drawing of the land involved, the details of the variance that is applied for and such other material as the Board may determine to be appropriate.

(2) An appeal to the Board from any ruling of the Zoning Administrator, or because the Board has original jurisdiction under terms of this Zoning Code, may be taken by any property owner, tenant, governmental officer, department, board or bureau affected. Appeals to the Board shall be taken within twenty days after the decision appealed from, and appeals shall be forwarded to the Board through the Zoning Administrator.

(3) When an application or appeal has been filed in proper form, with required data and fees, the Secretary of the Board shall place such application or appeal upon the calendar for hearing, in accordance with the Board's determined meeting schedule or with its ability to obtain a quorum, and shall send notices stating the time, place and object of the hearing. Such notices shall be served personally or by mail, at least ten days prior to the day of such hearing, upon the applicant or the appellant, and to such persons as the Board may specify in its rules and regulations. The notices, if served by mail, shall be sent to the last known address of the respective property owners. The Secretary shall also publish notice of such hearing in a newspaper of general circulation in the Village at least ten days prior to the public hearing. Any party may appear at such hearings in person or by agent or attorney.

(c) General Powers.

(1) The Board of Appeals may reverse or affirm, wholly or in part, or may modify, an administrative decision or a zoning requirement, and to that end the Board shall have all powers of the Zoning Administrator from whom the appeal is taken. The Board may impose such conditions regarding location, character or other features of the proposed lot or

building that will best serve the purposes of this Zoning Code, but the Board shall not permit any use which is not a permitted use in a particular zoning district.

(2) The Board shall decide all applications and appeals within thirty days after the completion of a hearing. Such decision shall be binding upon the Zoning Administrator unless it is overturned by a vote of three members of Village Council, and the terms of the Board's decision shall be incorporated in subsequent permits and official authorizations pertaining to the subject site affected.

(3) Every special exception or variance granted by the Board shall expire and be of no force or effect after twelve months from the date of granting by the Board unless the beneficiary of such special exception or variance shall have made a substantial start toward putting the property affected to the use permitted within such time period.

(4) In the case of a question as to the intended meaning of any provision of this Zoning Code, the Board may interpret its meaning as it applies to a particular property or class of properties. Before reaching a decision in response to any request, the Board may obtain the opinion of the Solicitor thereon.

(d) Variances.

(1) The Board shall have the power to authorize such variances from the provisions or requirements of this Zoning Code as will not be contrary to the public interest, but only in the case of peculiar conditions involving irregular, abnormally narrow, shallow or steep lots, or other unusual conditions, whereby strict and literal application of provisions or requirements of this Zoning Code would result in practical difficulty and unnecessary hardship that would deprive the owner of the reasonable use of the land or buildings involved. No variance from the strict application of any provision of this Zoning Code shall be granted by the Board unless it finds that all of the following facts and conditions exist:

A. That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not generally applicable to other lands, buildings or structures within the same zoning district.

B. 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 zoning district under the terms of this Zoning Code.

C. That the special conditions and circumstances do not result from the actions of the applicant.

- D. That granting the variance requested will provide the minimum necessary relief to alleviate the hardship.
 - E. That granting of the variance will be in harmony with the general purpose and intent of this Zoning Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 - F. That the proposed variance will neither constitute a change of zoning district, on the Official Zoning District Map, nor be of so general or recurrent a nature as to constitute a de facto change in zoning regulations if approved. In no case shall the Board of Appeals approve a variance for a use which is not a permitted use in the zoning district in which the property, building or structure is located.
 - G. That, if the subject property is located in a designated flood hazard area, the granting of the variance will not result in increased flood heights beyond that which are allowed in Chapter 1282, additional threats to public safety, extraordinary public expense, the creation of a nuisance or a conflict with any existing local laws or ordinances.
- (2) Variance requests involving property in a designated flood hazard area may be considered when the following conditions are met:
 - A. The proposed construction activity involves structures erected on a lot of one-half acre or less and is contiguous to and surrounded by lots with existing structures constructed below the base flood level.
 - B. The variance requested is the minimum necessary, considering the flood hazard, to afford relief.
 - C. No increase in any flood levels during the base flood discharge would result.
 - (3) No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted or nonconforming use of land, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
 - (4) Following disapproval by the Board of Appeals of an application or request for variance from the literal interpretation of this Zoning Code, no subsequent application requesting the same variance shall be filed by any applicant until the expiration of twelve months after the original or a subsequent disapproval.
 - (5) The Board shall cause to be made a record of all its proceedings, setting forth its reasons for its decision. Such record of the Board's decision shall be filed in the office of the Clerk of Council and shall be open to public inspection.

(e) Special Exceptions.

- (1) Application for a special exception shall follow the same procedures outlined in Section 1242.05(f). A special exception may be granted to allow the following situations:
 - A. To permit extension of a zoning district where its boundary line divides a lot held in single ownership on the effective date of this Zoning Code.
 - B. To permit the erection and use of a building or the use of premises for public utility purposes.
 - C. To permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, Act of God or the public enemy, to the extent of more than seventy-five percent of its reasonable value, where the Board finds some compelling public necessity requiring a continuance of the nonconforming use and where the primary purpose of continuing the nonconforming use is not to continue a monopoly.
 - D. To permit the one-time enlargement of an existing nonconforming building upon the same lot occupied by such building or upon an adjoining lot, provided that such lot was under the same ownership as the lot upon which such nonconforming building existed at the time such building became nonconforming, and provided, further, that such enlargement is necessary and incidental to the existing use of such building. In addition, such enlargement shall conform to the height, yard and area requirements of the zoning district in which it is located, where such enlargement is not detrimental to present and potential surrounding uses, will be in harmony with the general purpose and intent of this Zoning Code and will not be injurious to the neighborhood or otherwise detrimental to the health, safety and general welfare of the residents of the Village.
 - E. To vary parking and loading-unloading regulations whenever the character or use of the building is such as to make unnecessary the full provision of parking and loading-unloading facilities or when such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.
- (2) Before any special exception shall be issued, the Board shall make written findings certifying compliance with the specific rules governing an individual special exception and that satisfactory provision and arrangement have been made concerning the following, where applicable:
 - A. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

59 Administration, Enforcement and Penalty 1242.07

B. Off-street parking and loading areas where required, with particular attention to the items in paragraph (e)(2)A. hereof, the economic effects and the effects of noise, glare or odor of the special exception on adjoining properties and properties generally in the district;

C. Refuse and service areas, with particular reference to the items in paragraphs (e)(2)A. and B. hereof;

D. Utilities, with reference to locations, availability and compatibility;

E. Screening and buffering, with reference to type, dimensions and character;

F. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effects and compatibility and harmony with properties in the district;

G. Required yards and other open space;

H. General compatibility with adjacent properties and other property in the district.

(f) Administrative Appeal.

(1) The Board shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this Zoning Code.

(2) An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to Village Council, after the notice of appeal is filed with the Zoning Administrator, that by reason of facts stated in the application, a stay would, in the Zoning Administrator's opinion, cause imminent peril to life and property. In such case, and upon concurrence by Council, proceedings shall not be stayed other than by a restraining order which may be granted by a court of record.

(Ord. 81-11. Passed 7-6-81; Ord. 95-5. Passed 5-1-95; Ord. 97-07. Passed 7-7-97.)

1242.07 FEES.

(a) Each application for a zoning permit, sign permit, conditional use application, variance appeal, special exception, administrative appeal, zoning reclassification or Village Council appeal shall be accompanied by filing fees as set forth in subsection (b) hereof. Such fees shall be utilized to help cover the expenses of the Zoning Administrator, Planning Commission, the Board of Appeals and Village Council.

(b) The following fee schedule shall apply to nongovernmental applications and appeals filed pursuant to this Zoning Code:

(1) Zoning permit application. \$10.00

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| | (2) | Planned unit development application | |
| | | Preliminary plan application | |
| \$150.00 | | Final plan application | 75.00 |
| | (3) | Site plan review development application | 75.00 |
| | (4) | Sign permit application | |
| | | Up to 50 square feet per sign | 10.00 |
| | | Over 50 square feet per sign | 10.00 |
| + \$2.00 per sq. ft. over 50 | | | |
| | | (Note: zoning sign installations may also require issuance of an electrical permit) | |
| | (5) | Conditional use application | 35.00 |
| | (6) | Variance appeal | 35.00 |
| | (7) | Special exception appeal | 35.00 |
| | (8) | Administrative appeal | 35.00 |
| | (9) | Certificate of compliance (not involving a building permit) | 10.00 |
| | (10) | Zoning reclassification permit | 125.00* |
| | (11) | Village Council appeals from Planning Commission or Board of Appeals' decisions | 70.00** |
| 1224.03 included) | (12) | Right of way vacation request | 40.00 (if petition as per Section 80.00 (if no petition included) |

Additional fees may be collected in cases where recovery of incurred costs is necessary. Amendments to submitted plans requiring further review will be assessed such fees. The exact fee will be determined by the incurred cost of the review, the total of which will be passed on to the applicant.

* 40% refunded if request withdrawn prior to Council public hearing
 ** According to Section 1242.05(g)(4) - \$30.00 refunded if appeal affirmed (Ord. 81-11. Passed 7-6-81; Ord. 93-13. Passed 12-6-93.)

1242.99 PENALTY.

Whoever violates, disobeys or omits, neglects or refuses to comply with, or resists the enforcement of, any of the provisions of this Zoning Code, shall, for a first offense, be fined not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00). For a second violation of the same offense, such person is guilty of a misdemeanor of the fourth degree and shall be fined not more than two hundred and fifty dollars (\$250.00) or imprisoned not more than thirty days, or both. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. (Ord. 81-11. Passed 7-6-81; Ord. 95-5. Passed 5-1-95.)