

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS**

**CHAPTER 1197: BOARD OF ZONING APPEALS**

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Section

1197.01	Jurisdiction
1197.02	Appeal procedure; notice and hearing
1197.03 - 1197.11	[Reserved]
1197.10	Basis of granting use variances or exceptions
1197.11	Variances and exceptions relating to dimensions and setback
1197.12 - 1197.20	[Reserved]
1197.21	Public hearings on appeal
1197.22	Notice of proposed hearings
1197.23	Journal and rules of procedure
1197.24	Conditions for hearing appeal
1197.25	Appeal form information
1197.26	Petitioner to supply requested data
1197.27 - 1197.30	[Reserved]
1197.31	Building permit application time limitation
1197.32 - 1197.40	[Reserved]
1197.41	Compulsory testimony or evidence
1197.42	Meetings and voting; action subject to Council approval
1197.43 - 1197.50	[Reserved]
1197.51	Variance survey fee

***Cross-reference:***

*Building permit requirements; expiration, see Ch. 1313*

*Fees for hearings; exceptions, see § 1101.01*

*Posting notices in public places, see Charter Art. IV, Sec. 10*

*Prohibited uses, see Ch. 1189*

*Required yards and areas, see Ch. 1171*

*Variance defined, see § 1113.25*

*Zoning amendments procedures, see Ch. 1199*

*Zoning enforcement and penalty, see § 1191.13*

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / § 1197.01 JURISDICTION.**

**§ 1197.01 JURISDICTION.**

The Board of Zoning Appeals shall have jurisdiction to hear and decide appeals from orders, decisions, determinations and regulations by the Building Commissioner, any other administrative officer, board or commission, with respect to the application or enforcement of ordinances governing zoning, and to grant exceptions to and variances in the application thereof.

('64 Code, § 1197.01) (Ord. 2042, passed 12-20-72)

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / § 1197.02 APPEAL PROCEDURE; NOTICE AND HEARING.**

**§ 1197.02 APPEAL PROCEDURE; NOTICE AND HEARING.**

No appeal shall be heard by the Board of Zoning Appeals unless brought before it in accordance with the provisions of this Zoning Code (Ordinance 2042, passed December 20, 1972), and every appeal properly brought before it shall be heard de novo after notice of hearing thereon has been given in the manner hereinafter provided.

('64 Code, § 1197.02) (Ord. 2042, passed 12-20-72)

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / §§ 1197.03 - 1197.11 [RESERVED].**

**§§ 1197.03 - 1197.11 [RESERVED].**

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / § 1197.10 BASIS OF GRANTING USE VARIANCES OR EXCEPTIONS.**

**§ 1197.10 BASIS OF GRANTING USE VARIANCES OR EXCEPTIONS.**

Use variances or exceptions which the Board of Zoning Appeals has jurisdiction to grant may be granted on appeal by the Board, provided, after hearing thereon, the Board finds that strict application or enforcement of this Zoning Code or the enforcement of the orders of the Building Commissioner, or of orders or regulations of any other administrative official or agency governing zoning as follows. The following factors shall be considered by the Board or Council, where applicable, when determining whether an applicant will suffer an unnecessary hardship; such hardship must be demonstrated by clear and convincing evidence as to ALL of the following:

- (a) The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which it is located;
- (b) The variance(s) request stems from a condition which is unique to the property at issue and not ordinarily found in the zoning district;
- (c) The hardship condition is not created by actions of the applicant;
- (d) The applicant purchased the property without knowledge of the zoning restriction;
- (e) The variance(s) sought is the minimum which will afford relief to the applicant;
- (f) The granting of the variance(s) will not adversely affect the rights of those property owners to whom notice is required under § 1197.22;
- (g) The granting of the variance(s) will not adversely affect the public health, safety, or general welfare; and
- (h) The variance(s) will be consistent with the general spirit and intent of this Zoning Code.

('64 Code, § 1197.10) (Ord. 2042, passed 12-20-72; Am. Ord. 4251, passed 5-2-06)

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / § 1197.11 VARIANCES AND EXCEPTIONS RELATING TO DIMENSIONS AND SETBACK.**

## **§ 1197.11 VARIANCES AND EXCEPTIONS RELATING TO DIMENSIONS AND SETBACK.**

The Board of Zoning Appeals shall also have jurisdiction to grant variances and exceptions relating to the dimensions and setback requirements with respect to any existing subplot or sublots or any proposed subplot or sublots in any proposed allotment or subdivision, provided that the plat for such proposed allotment or subdivision has been submitted to the Planning Commission and the Commission, after public hearing thereon, requests and recommends that such variances or exceptions be granted. In any such case, no other prior order or determination shall be required and no public notice or hearing other than notice of hearing by the Commission shall be required before granting such variance or exception. All other requests for variances and exceptions for an existing subplot or sublots shall proceed in accordance with the balance of the provisions of this chapter. Such variance or exception may be granted by the Board of Zoning Appeals provided that it finds upon a hearing thereof that the applicant will experience a practical difficulty. The following factors shall be considered and weighed by the Board or Council, where applicable, when determining whether an applicant will experience practical difficulty:

- (a) Whether there exist site conditions, such as narrowness, shallowness, or topography, unique to the property in question that are not applicable generally to other lands or structures in the same zoning district;
- (b) Whether the property in question is located near a non-conforming or non-harmonious use, structure, or site conditions, or whether the property in question abuts a less restrictive zoning district;
- (c) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance(s);
- (d) Whether the variance(s) is substantial;
- (e) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance(s);
- (f) Whether the variance(s) would adversely affect the delivery of governmental services (e.g., water, sewer, refuse removal);
- (g) Whether the property owner purchased the property with knowledge of the zoning restriction;
- (h) Whether the property owner's predicament feasibly can be obviated through some

method other than a variance(s); and

(i) Whether the spirit and intent of the Zoning Code would be observed and substantial justice done by granting the variance(s).

('64 Code, § 1197.11) (Ord. 2042, passed 12-20-72; Am. Ord. 4251, passed 5-2-06)

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / §§ 1197.12 - 1197.20 [RESERVED].**

**§§ 1197.12 - 1197.20 [RESERVED].**

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / § 1197.21 PUBLIC HEARINGS ON APPEAL.**

**§ 1197.21 PUBLIC HEARINGS ON APPEAL.**

Except as permitted by § 1197.11, a public hearing shall be held on any appeal pending before the Board of Zoning Appeals before granting any variance or exception, or in any case when the majority of the members of the Board hold that the public interest requires a public hearing, or in any case wherein the person making the appeal files with his appeal a written demand for a public hearing.

('64 Code, § 1197.21) (Ord. 2042, passed 12-20-72)

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / § 1197.22 NOTICE OF PROPOSED HEARINGS.**

**§ 1197.22 NOTICE OF PROPOSED HEARINGS.**

Public hearings before the Board of Zoning Appeals shall be held only after five days prior notice thereof has been published once in any publication having general circulation in the city or ten days prior notice thereof has been published once in a newspaper of general circulation as defined by the Ohio Revised Code and, in addition, ten days prior notice by

first-class mail has been given to owners or occupants of property adjacent to the premises involved and to owners or occupants of property located immediately across the street therefrom, and in addition thereto, to the owners or occupants of not less than five neighboring properties. Notice shall be deemed complete as of the day it is mailed.

('64 Code, § 1197.22) (Ord. 2711, passed 4-17-84)

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / § 1197.23 JOURNAL AND RULES OF PROCEDURE.**

**§ 1197.23 JOURNAL AND RULES OF PROCEDURE.**

The Board of Zoning Appeals shall keep a journal of its proceedings and may adopt rules of procedure, not inconsistent with this Zoning Code, for filing, prosecution, hearing and determination of appeals brought before it.

('64 Code, § 1197.23) (Ord. 2042, passed 12-20-72)

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / § 1197.24 CONDITIONS FOR HEARING APPEAL.**

**§ 1197.24 CONDITIONS FOR HEARING APPEAL.**

No appeal shall be heard by the Board of Zoning Appeals unless:

(a) The appeal is filed in writing setting forth the information required by this Zoning Code within ten days from the making of the order, determination or enforcement from which the appeal is taken;

(b) The appeal is filed by the owner in fee simple of the premises involved, his duly authorized agent, lessee, optionee or contractor; and

(c) Payment to the Finance Director to defray administrative expenses of \$50 for each parcel of land for which an appeal is filed for a single variance on such parcel and for each additional variance requested on the same parcel an additional fee of \$15 shall be paid.

('64 Code, § 1197.24) (Ord. 2042, passed 12-20-72; Am. Ord. 2473, passed 10-16-79)

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / § 1197.25 APPEAL FORM INFORMATION.**

**§ 1197.25 APPEAL FORM INFORMATION.**

Every appeal shall be made on forms provided for that purpose by the Building Department and shall set forth the following:

- (a) The name of the owner of the premises involved;
- (b) The name of the person making the appeal and his interest in the premises involved;
- (c) A description of the premises in sufficient detail to identify its location and approximate size and shape;
- (d) A description of the order, regulation or act of enforcement appealed from and the date thereof;
- (e) The facts and circumstances upon which it is claimed the appeal should be granted; and
- (f) Such other information as shall be provided by rule of the Board of Zoning Appeals.

('64 Code, § 1197.25) (Ord. 2042, passed 12-20-72)

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / § 1197.26 PETITIONER TO SUPPLY REQUESTED DATA.**

**§ 1197.26 PETITIONER TO SUPPLY REQUESTED DATA.**

Whenever the Board of Zoning Appeals considers it necessary to enable it to thoroughly consider any appeal, the person filing the appeal shall, at his expense, promptly supply to it all engineering data, surveys, drawings, technical data, plot plan and other similar information requested by the Board. Failure to comply with the request of the Board shall be grounds for denying an appeal.

('64 Code, § 1197.26) (Ord. 2042, passed 12-20-72)

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / §§ 1197.27 - 1197.30 [RESERVED].**

**§§ 1197.27 - 1197.30 [RESERVED].**

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / § 1197.31 BUILDING PERMIT APPLICATION TIME LIMITATION.**

**§ 1197.31 BUILDING PERMIT APPLICATION TIME LIMITATION.**

Whenever a variance or exception is granted by the Board of Zoning Appeals, except variances and exceptions granted pursuant to § 1197.11, for any building, structure or other improvement for which a building permit is required by the ordinances and regulations of this municipality, an application for such building permit together with all required plats, plans and other data and documents shall be properly filed within six months from the date such variance or exception is granted; otherwise, the variance or exception shall automatically become null and void upon the expiration of such six-month period.

('64 Code, § 1197.31) (Ord. 2042, passed 12-20-72)

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / §§ 1197.32 - 1197.40 [RESERVED].**

**§§ 1197.32 - 1197.40 [RESERVED].**

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / § 1197.41 COMPULSORY TESTIMONY OR EVIDENCE.**



**§ 1197.41 COMPULSORY TESTIMONY OR EVIDENCE.**

The Chairman of the Board of Zoning Appeals is hereby empowered to compel the attendance of any person at any hearing before it and to compel the production of evidence, either written or oral, which is material to any matter pending on appeal before it, and to issue subpoenas and subpoenas duces tecum for such purpose.

('64 Code, § 1197.41) (Ord. 2042, passed 12-20-72)

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / § 1197.42 MEETINGS AND VOTING; ACTION SUBJECT TO COUNCIL APPROVAL.**

**§ 1197.42 MEETINGS AND VOTING; ACTION SUBJECT TO COUNCIL APPROVAL.**

The Board of Zoning Appeals shall set a stated time and place for its regular monthly meetings and may be called into session at any time by the Chairman or the Mayor upon advance notice of not less than 24 hours. A majority of its members shall constitute a quorum for the transaction of business, and the concurring affirmative vote of at least four members thereof shall be necessary to make any final order, determination or decision. Whenever the Board grants any variance or exception, it shall make a report thereof in the form prescribed by the President of Council. All variances and exceptions granted by the Board shall be subject to review and approval by Council before becoming effective.

('64 Code, § 1197.42) (Ord. 2042, passed 12-20-72)

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / §§ 1197.43 - 1197.50 [RESERVED].**

**§§ 1197.43 - 1197.50 [RESERVED].**

**PART ELEVEN - PLANNING AND ZONING CODE / TITLE ELEVEN - Administration and Enforcement / CHAPTER 1197: BOARD OF ZONING APPEALS / § 1197.51 VARIANCE SURVEY FEE.**

**§ 1197.51 VARIANCE SURVEY FEE.**

(a) Whenever the Board of Zoning Appeals under the provisions of this Zoning Code shall, in its discretion, grant a variance, the Board may assume that the City Engineer shall immediately make a survey of the premises and locate, by setting appropriate stakes or other tangible devices to indicate to the property owner and other interested parties, the exact location for the placement of such buildings. During the erection of such buildings, the Engineer shall make any checks which he deems necessary to see that the terms of the variance are being complied with, and after the completion of such buildings the Engineer shall make such checkups as he deems feasible.

(b) There shall be assessed against the property owner, and paid into the municipality as compensation to the Engineer for his services, such amount of money as the Engineer is entitled to on an hourly basis in accordance with the existing ordinance providing for compensation to the Engineer and to his assistants.

('64 Code, § 1197.51) (Ord. 2042, passed 12-20-72)