

TITLE THREE – BOARD OF ZONING APPEALS

CHAPTER 1137 BOARD OF ZONING APPEALS

- 1137.01 Establishment, Organization and Procedure.**
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CROSS REFERENCES

Fence defined – See P. & Z. 1181

Private swimming pool defined – See P. & Z. 1187

1137.01 ESTABLISHMENT, ORGANIZATION AND PROCEDURE.

- A. Establishment.
There is hereby established a Board of Zoning Appeals which shall consist of five (5) electors of the Village appointed by the Mayor and approved by Council.

- B. Appointments.
The five electors first appointed shall serve for terms of one (1), two (2), three (3), four (4) and five (5) years respectively.

Thereafter, appointments shall be for five (5) year terms. Each member shall serve until his successor is appointed and qualified.

Should a vacancy occur before the end of a member's term, the Mayor shall appoint an elector of the Village, with approval of Council.

- C. Removals.
Members of the Board shall be removable by the Mayor for non-performance of duty, misconduct in office, or other cause.

Written charges shall be filed with Council.

A public hearing shall be scheduled to hear such charges.

A copy of the charges shall be served to the member so charged at least ten (10) days prior to the hearing, either

Personally,

Registered mail, or

Leaving the same at his or her usual place of residence.

The member shall be given an opportunity to be heard and answer such charges at the public hearing.

Council, by an affirmative vote of three-fourths (3/4) of the members, shall decide the matter.

D. Organization and Procedure.

The Board of Zoning Appeals shall organize and adopt rules for its own government, not inconsistent with law or with any other ordinances of the Municipality.

1. Officers.

The Board shall organize annually and elect a Chairperson, Acting Chairperson, and Secretary.

2. Meetings.

a. Meeting Schedule.

Meetings of the Board shall be held at the call of the Chairperson, and at such other times as the Board may determine.

b. Oaths, Attendance.

The Chairperson, or in his absence the Acting Chairperson, may administer oaths and the Board may compel the attendance of witnesses.

c. Meetings Open to the Public.

All meetings of the Board shall be open to the public.

However, the Board may go into executive session for discussion, but at all times, hearings shall conform to the open meeting requirements of Ohio R.C. Section 121.22.

d. Records.

The Board shall:

- i. 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
 - ii. Keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Fiscal Officer, and
 - iii. Records shall be a public record.
- e. Quorum.
The majority of the members of the Board shall constitute a quorum.

Any decision of the Board must be approved by a vote of at least a majority of all members of the Board.

- f. Departments May Provide Assistance.
The Board may call upon the various departments of the Municipality for assistance in the performance of its duties, and

It shall be the duty of such departments to render such assistance to the Board, as may be reasonably required.

(Ord. 10-63. Passed 2-10-64.)

1137.02 JURISDICTION AND POWERS.

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

- A. To hear and decide on such conditional uses
Under the terms provided in this Ordinance.
- B. To hear and decide upon application for special exceptions
Under the terms provided of this Ordinance.
- C. To hear and decide upon application for variances
Under the terms provided in this Ordinance.
- D. To hear and decide appeals,

Where it is alleged there is an error in any order, requirement, decision, or determination made by the Zoning Administrator in

the enforcement of this Ordinance.

- E. To interpret the provisions of the Zoning Ordinance or 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 permitted or prohibited use, in accordance with the intent and purpose of each district.
3. To exercise such other powers as may be granted to the Board by this Ordinance, amendment thereto, or by the general laws as set forth in the Ohio Revised Code as amended.

- F. To enforce the performance requirements,

Under the terms provided in this Ordinance.

The Board shall not have the power to alter, or change, the zoning district classification of any property,

Nor to make any change to the terms or intent of this Ordinance,

But does have power to act on those matters where the Ordinance provides for judicial review, interpretation, variance, or conditional use, as defined in this Article.

1137.03 POWERS OF THE BOARD.

- A. Conditional Uses.

1. The Board of Zoning Appeals shall have the power to hear and decide applications for conditional uses, in accordance with the provisions of this Zoning Ordinance.
2. Application.
An application for conditional use permit shall be filed by at least one owner, or lessee of property, for which such conditional use is proposed, with the Zoning Administrator, who shall transmit same to the Board.

At a minimum, the application shall contain the following information:

- a. Name, address and phone number of applicant.
- b. Legal description of property.
- c. A list of property owners, including tax mailing addresses,
Within,
Contiguous to, and
Directly across the street from
The parcel the conditional use is requested.
- d. Description of existing use.
- e. Description of proposed conditional use.
- f. A plan of the proposed site for the conditional use showing the
Location of all buildings,
Parking and loading area,
Traffic access and traffic circulation,
Open spaces,
Landscaping,
Refuse and service areas,
Utilities,
Signs, and
Yards.
- g. A narrative statement evaluating the economic effects on adjoining properties, and the effect of such elements as

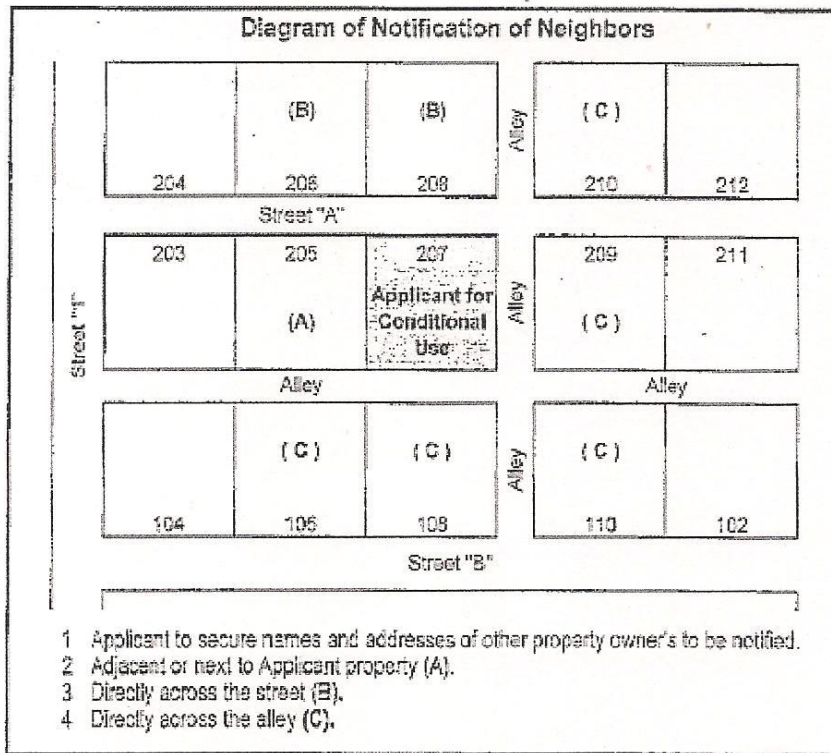
Fumes,
Glare,
Noise,
Odor, and

Vibration on adjoining properties.

- h. A written statement and discussion of the general compatibility with adjacent and other properties in the district.
 - i. Such other information as the Board may require to determine if the proposed conditional use meets the intent and requirement of this Ordinance.
3. Public Hearing by the Board of Zoning Appeals.
The Board shall hold a Public Hearing within twenty (20) days from the receipt of a completed conditional use application.
4. Notice of Public Hearing in Newspaper.
Before holding the Public Hearing, notice of such hearing shall be given in one, or more, newspapers of general circulation in the Village at least ten (10) days before the date of said hearing.

The notice shall set forth the time and place of the Public Hearing, and the nature of the proposed conditional use.

5. Notice to property owners.
Before holding the Public Hearing, the following shall occur:
- a. Applicant (owner) will provide a list of current property owners that are contiguous to, across the street from or across the alley from the applicant's property.
 - b. Property owner's name(s) and address(es) to be secured from the Ottawa County Auditor's records.
 - c. Mailing address(es) shall be the tax mailing address(es) on file with the Ottawa County Auditor's Office.
 - d. Applicant to present the names and addresses, and accompanying map to the Zoning Administrator or his/her appointee.



- e. Copies of all documents relevant to the case shall be maintained in the case file in accordance with Ordinance 53-08 Public Records Policy.

Once the items above are received, along with a completed application, written notice of such hearing shall be mailed by the Board,

By certified mail

At least ten (10) days before the day of the hearing

To all property owners within, contiguous to, and directly across the street from the parcel for which the conditional use is requested.

The notice shall contain the same information as required of notices published in newspapers as specified in this Chapter.

6. General standards applicable to all Conditional Uses. In addition to the specific requirements for conditionally

permitted uses, 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:

- a. Will be harmonious with and in accordance with the general objectives, or with any specific objective, of the Village's Land Use Plan and/or the Zoning Ordinance.
- b. 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.

- c. Will not be hazardous, or disturbing, to existing, or future, neighboring uses.
- d. Will be served adequately by essential public facilities and services, such as

Drainage structures,

Highways,

Police and fire protection,

Refuse disposal,

Schools,

Streets, and

Water and sewers;

Or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

- e. 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.

f. Will not involve

Activities,

Conditions of operation,

Equipment,

Materials,

Processes, and

Uses,

That will be detrimental to any person, property, or the general welfare, by reason of excessive production of

Fumes,

Glare,

Noise,

Odors.

Smoke, or

Traffic.

g. Will have vehicular approaches to the property which shall be designed as not to create an interference with traffic on surrounding public streets or roads.

h. Will not result in the destruction, loss or damage of a natural, scenic, or historic feature of major importance.

7. Supplementary conditions and safeguards.
In granting any conditional use, the Board may prescribe appropriate conditions and safeguards in conformity with this Ordinance.

Violations of such conditions and safeguards shall be deemed

a violation of this Ordinance, and punishable per Section 1133.99, when made a part of the terms under which the conditional use is granted.

8. Lot specifications. (Area, Frontage, Setbacks)
The area, frontage and setback requirements in the applicable zone shall apply, whenever no specific areas frontage and setback requirements are specified in provision for specific conditional uses;

Provided the Board of Zoning Appeals authorizes the waiver or modification of certain requirements as necessary to achieve compatible development with adjacent land area, as well as in the interest of the community in general.

9. Specific standard.
The specific standards shall be used in conjunction with other Standards, as required in the respective zoning district in which the conditional use is proposed.

In the event of conflicting standards, the conditional use standard shall prevail.

10. Expiration of Conditional Use Permit.
A Conditional Use Permit shall be deemed to authorize only one particular conditional use, and

Said permit shall automatically expire if, for any reason, the conditional use shall cease for more than six months.

11. Decisions of the Board.
The Board shall decide all conditional use applications within thirty (30) days after the final hearing thereon.

- a. The applicant shall be notified in writing of the board's decision and the finding of fact(s) which were the basis for the Board's determination.

- b. A certified copy of the Board's decision, including all terms and conditions, shall be transmitted to the Zoning Administrator and

Shall be binding upon and observed by him/her.

- c. The Zoning Administrator shall fully incorporate these

same terms and conditions in the permit to the application,

Whenever a permit is authorized by the Board.

B. Special Exceptions.

1. The Board of Zoning Appeals shall have the power to hear and decide, in accordance with the provisions of the Zoning Ordinance, applications for the following special exemptions:

- a. Non-conforming Uses.

- i. The substitution for a non-conforming use, existing at the time of enactment of this Zoning Ordinance (Ord. 10-63, passed February 10, 1964), is allowed for another non-conforming use,

If no structural alterations, except those required by law or ordinance are made.

However, in an "R" District, no change shall be authorized by the Board to any use, which is not a permitted or conditional use in any "R" District, and

In a "B" District, no change shall be authorized to any use which is not permitted or conditional use in any "B" District.

- ii. The extension of a non-conforming building, upon the lot occupied by such building, or on an adjoining lot, shall not exceed, in all, twenty (20%) percent of the existing ground floor area of the existing building devoted to a non-conforming use,

Provided that such lot was under the same ownership as the lot in question at the time the use of such building became non-conforming, and

That such extension is necessary and incidental to such extension, and

That such extension shall be within a distance of not more than twenty-five (25') feet of the existing building or premises; and

Further provided, that such extension shall in any case be undertaken within ten (10) years of the enactment of this Zoning Ordinance,

Provided only one (1) such extension will be permitted.

However, the Board shall not authorize any extension of enlargement,

Which would result in extending the useful life of a non-conforming building, or

Which would result in a violation of the provisions of this Zoning Ordinance with respect to any adjoining premises.

- b. Extension of Use on the Border of a District.
The BZA may allow the extension of a use or building into a more restricted district immediately adjacent thereto, but not more than twenty-five (25') feet beyond the dividing line of the two (2) districts,

Under such conditions as will safeguard development in the more restricted district.

- c. Temporary Structures and Uses.
The BZA may allow temporary use of a structure or premises in any district for a purpose or use that does not conform to the regulations prescribed elsewhere in this Zoning Ordinance for the district in which it is located,

Provided that such use is of a temporary nature and does not involve the erection of a substantial structure.

A Zoning Certificate for such use shall be granted in the form of a temporary and revocable permit,

- i. For not more than a twelve (12) month period, and
- ii. Subject to such conditions as will safeguard the public health, safety, convenience and general welfare.

2. Application.

An application for a special exception shall be filed by at least

one owner, or lessee of property, for which such special exception is proposed, with the Zoning Administrator, who shall transmit same to the Board.

At a minimum, the application shall contain the following information:

- a. Name, address and phone number of applicant.
- b. Legal description of property.
- c. A list of property owners, including tax mailing addresses,
Within,
Contiguous to, and
Directly across the street from
The parcel the special exception is requested.
- d. Description of existing use.
- e. Description of proposed special exception.
- f. A plan of the proposed site for the special exception showing the
Location of all buildings,
Proposed buildings,
Parking and loading area,
Traffic access and traffic circulation,
Open spaces,
Landscaping,
Refuse and service areas,
Utilities,
Signs, and

Yards.

- g. A narrative statement evaluating the economic effects on adjoining properties, and the effect of such elements as

Fumes,

Glare,

Noise,

Odor, and

Vibration on adjoining properties.

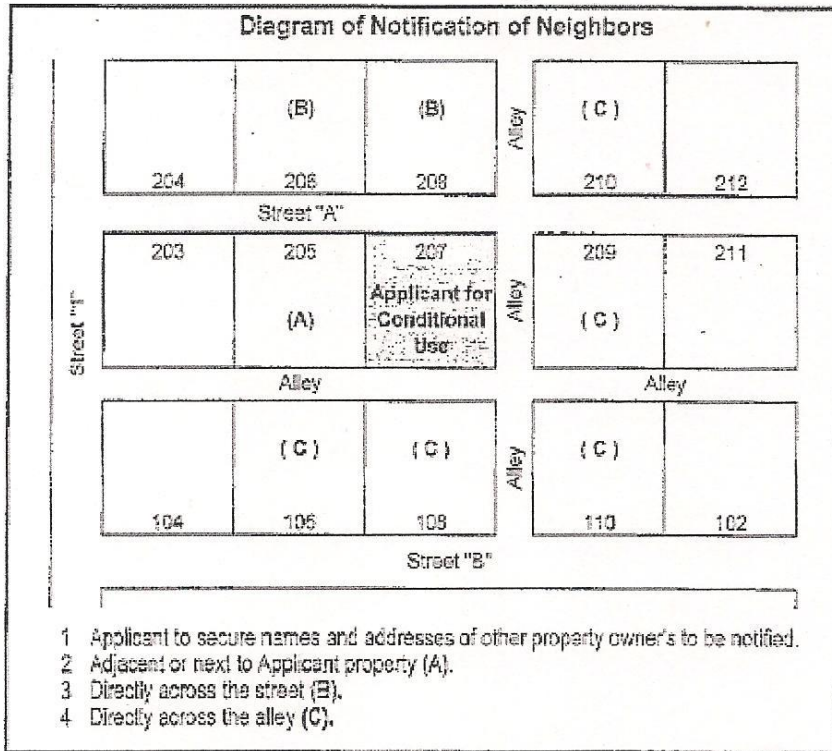
- h. A written statement and discussion of the general compatibility with adjacent and other properties in the district.

- i. Such other information as the Board may require to determine if the proposed special exception meets the intent and requirement of this Ordinance.

- 3. Public Hearing by the Board of Zoning Appeals.
The Board shall hold a Public Hearing within twenty (20) days from the receipt of a completed special exception application.
- 4. Notice of Public Hearing in Newspaper.
Before holding the Public Hearing, notice of such hearing shall be given in one or more newspapers of general circulation in the Village at least ten (10) days before the date of said hearing.

The notice shall set forth the time and place of the Public Hearing, and the nature of the proposed special exception.

- 5. Notice to property owners.
Before holding the public hearing, the following shall occur:
 - a. Applicant (owner) will provide a list of current property owners that are contiguous to, across the street, or alley from the applicant's property.
 - b. Property owner's name(s) and address(es) to be secured from the Ottawa County Auditor's records.



- c. Mailing address(es) shall be the tax mailing address(es) on file with the Ottawa County Auditor's Office.
- d. Applicant to present the names and addresses and accompanying map to the Zoning Administrator or his/her appointee.
- e. Copies of all documents relevant to the case shall be maintained in the case file in accordance with Ordinance 53-08 Public Records Policy.

Once the items above are received, along with a completed application, written notice of such hearing shall be mailed by the Board,

By certified mail

At least ten (10) days before the day of the hearing

To all property owners within, contiguous to, and directly across the street from the parcel for which the special exception is requested.

The notice shall contain the same information as required of notices published in newspapers as specified in this Chapter.

6. Decisions of the Board.
The Board shall decide all special exception applications within thirty (30) days after the final hearing thereon.

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

b. A certified copy of the Board's decision, including all terms and conditions, shall be transmitted to the Zoning Administrator and

Shall be binding upon and observed by him/her.

c. The Zoning Administrator shall fully incorporate these same terms and conditions in the permit to the application,

Whenever a permit is authorized by the Board.

C. Variances.

1. There are two types of variances, which the Board of Zoning Appeals may grant: an area variance and a use variance.

The factors to be considered by the Board of Zoning Appeals differ for the two types of variances.

a. Area Variance.
An area variance is a departure from the provisions of the zoning resolution usually relating to:

Frontage/lot width,

Height,

Lot size,

Setbacks, and

Side yards.

These variances relate to the physical characteristics of the property.

Strict enforcement of the zoning requirements for the specific lot would present “practical difficulties”, basically making the property unusable.

b. Use Variance.

A use variance involves the development, or conversion, of land for a use not permitted in the specific zoning district.

The factors or standards applied to a use variance are those related to the concept of “unnecessary hardship.”

A use variance must not be contrary to the public interest and the Board of Zoning Appeals must insure that the spirit of the zoning resolution is observed.

In other words, the use requested is consistent and harmonious with the existing uses.

Summary

In either type of variance request, the variance, as granted, shall be the minimum variance necessary to accomplish the reasonable use of the land or building.

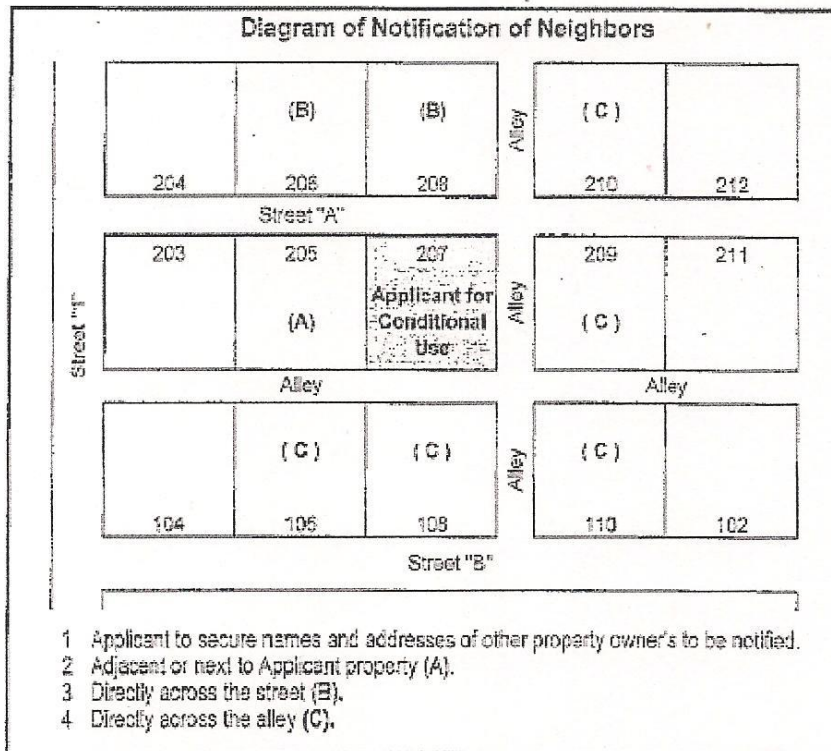
The granting of a variance runs with the land, and is not approved for the present landowner only.

2. Application Procedure.

A variance from the terms of the Ordinance shall not be granted by the Board of Zoning Appeals unless and until

A written application for an variance is submitted to the Zoning Administrator and the Board of Zoning Appeals containing:

- a. Applicant’s Property Owner(s)’ name(s), address(es), and phone number(s).
- b. Legal description of property.



c. A list of property owners, including tax mailing addresses,

Within,

Contiguous to, and

Directly across the street from

The parcel for which the variance is requested.

d. Description of the nature of the variance requested.

e. The completion of the Finding of Fact for a variance application.

3. Public Hearing by the Board of Zoning Appeals.
The Board shall hold a Public Hearing within twenty (20) days from the receipt of a completed variance application.
4. Notice of Public Hearing in Newspaper.
Before holding the Public Hearing, notice of such hearing shall be given in one or more newspapers of general circulation in the Village at least ten (10) days before the date of said hearing.

The notice shall set forth the time and place of the Public Hearing, and the nature of the proposed variance.

5. Notice to property owners.
Before holding the public hearing, the following shall occur:
 - a. Applicant (owner) will provide a list of current property owners that are contiguous to, across the street or alley from the applicant's property.
 - b. Property owner's name(s) and address(es) to be secured from the Ottawa County Auditor's records.
 - c. Mailing address(es) shall be the tax mailing address(es) on file with the Ottawa County Auditor's Office.
 - d. Applicant to present the names and addresses and accompanying map to the Zoning Administrator or his or her appointee.
 - e. Copies of all documents relevant to the case shall be maintained in the case file in accordance with Ordinance 53-08 Public Records Policy.

Once the items above are received, along with a Completed application, written notice of such hearing shall be mailed by the Board,

By certified mail

At least ten (10) days before the day of the hearing

To all property owners within, contiguous to, and directly across the street from the parcel for which the conditional use is requested.

The notice shall contain the same information as required of notices published in newspapers as specified in this Chapter.

6. Decisions of the Board.
The Board shall decide all variance applications within Thirty (30) days after the final hearing thereon.

- a. The applicant shall be notified in writing of the board's

decision and the finding of fact(s) which were the basis for the Board's determination.

- b. A certified copy of the Board's decision, including all terms and conditions, shall be transmitted to the Zoning Administrator and

Shall be binding upon and observed by him/her.

- c. The Zoning Administrator shall fully incorporate these same terms and conditions in the permit to the application,

Whenever a permit is authorized by the Board.

7. Lapses of variance.

A variance, once granted, shall not be withdrawn or changed unless

There is a change of circumstances, or

If, after the expiration of six (6) months, no construction has taken place in accordance with the terms and conditions for which said variance was granted.

The Zoning Administrator shall give a notice in writing of the lapse of the variance, and

Thirty (30) days thereafter the variance shall be deemed null and void and all regulations governing said premises in question shall revert to those in effect before the variance was granted.

- 8. Application Forms. (Area Variance; Use Variance).
See end of Chapter.

D. Appeals

Appeals shall conform to the procedures and requirements of this Ordinance.

- 1. The Board of Zoning Appeals shall have the power to hear and decide applications for appeals in accordance with the provisions of this Zoning Ordinance.
- 2. Appeals to the Board of Zoning Appeals concerning interpretation or administration of this Ordinance 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 Zoning Administrator.

- a. Such appeal shall be taken within twenty (20) days after the decision, by filing with the zoning Administrator and with the Board of Zoning Appeals, a notice of appeal specifying the ground upon which the appeal is being taken.
 - b. The Zoning Administrator shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken.
3. Stay of Proceedings.
An appeal stays all proceedings in furtherance of the action appealed from, unless

The Zoning Administrator, from whom the appeal is taken, certifies to the Board of Zoning Appeals,

After the notice is filed with him/her,

That by reason of facts stated in the application, a stay would, in his/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 of Zoning Appeals or by

A court of record on application,

With a notice to the Zoning Administrator from whom the appeal is taken.

4. Public Hearing by the Board of Zoning Appeals.
The Board shall hold a Public Hearing within twenty (20) days from the receipt of a completed conditional use application.
5. Notice of Public Hearing in Newspaper.
Before holding the Public Hearing, notice of such hearing shall be given in one or more newspapers of general circulation in the Village at least ten (10) days before the date of said hearing.

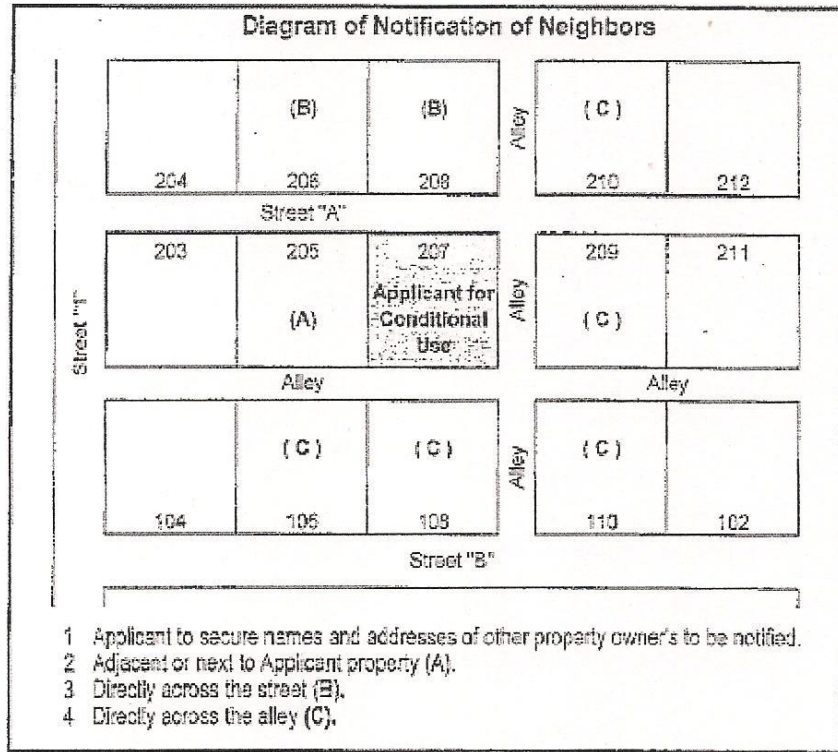
The notice shall set forth the time and place of the Public

Hearing, and the nature of the proposed appeal.

6. Notice to property owners.

Before holding the public hearing, the following shall occur:

- a. Applicant (owner) will provide a list of current property owners that are contiguous to, across the street or across the alley from the applicant's property.



- b. Property owner's name(s) and address(es) to be secured from the Ottawa County Auditor's records.
- c. Mailing address(es) shall be the tax mailing address(es) on file with the Ottawa County Auditor's Office.
- d. Applicant to present the names and addresses and accompanying map to the Zoning Administrator or his or her appointee.
- e. Copies of all documents relevant to the case shall be maintained in the case file in accordance with Ordinance 53-08 Public Records Policy.

Once the items above are received, along with a completed application, written notice of such hearing shall be mailed by the Board,

By certified mail

At least ten (10) days before the day of the hearing

To all property owners within, contiguous to, and directly across the street from the parcel for which the conditional use is requested.

The notice shall contain the same information as required of notices published in newspapers as specified in this Chapter.

E. Performance Requirements Procedure.

The Board of Zoning Appeals shall have the power to authorize,

Upon application in specific cases filed as hereafter provided,

Issuance of a Zoning Certificate for uses that are subject to performance requirements procedure under Section 1187, as provided in the following:

1. Application.

An application for a Zoning Certificate for a use subject to performance requirements shall be submitted in duplicate on a form prescribed by the Board.

The applicant shall also submit in duplicate a plan of the proposed construction or development,

Including a description of the proposed

Machinery,

Processes,

Products, and

Specifications for the mechanisms and techniques

To be used in restricting the emissions of dangerous and objectionable elements as set forth in Section 1187,

In accordance with rules prescribed by the Board, specifying the type of information required in such plans and specifications.

The fee for such application shall include the cost of the special reports that may be required to process it, as set forth in subsection (2) below.

2. Report by expert consultants.

If, in its opinion, the proposed use may cause the emission of dangerous or objectionable elements, the Board may refer the application to one or more expert consultants,

Qualified to advise as to whether a proposed use will conform to the applicable performance standards specified in Section 1187, for investigation and report.

Such consultant(s) shall report as promptly as possible after the receipt of such application.

A copy of such report shall be promptly furnished to the applicant.

3. Review by the Board of Zoning Appeals.

Within thirty (30) days after the Board has received the aforesaid application, or the aforesaid report,

If a report was required, or

With such further period as agreed to by the applicant,

The Board shall decide whether the proposed use will conform to the applicable performance standards, and on such basis shall

Authorize, or refuse to authorize issuance of a Zoning Certificate, or

Require a modification of the proposed

Plan of construction or specifications,

Equipment, or

Operation.

Any Zoning Certificate, so authorized and issued, shall be conditioned upon, among other things, the following:

- a. The applicant's completed buildings and installations conforming in operation to the applicable performance standards, and
- b. The applicant's paying the fees for services of the expert consultant(s) deemed reasonable and necessary by the Board, to advise the Board as to whether or not the applicant's completed buildings and installations in operation will meet the applicable performance standards.

4. Continued Enforcement.

The Zoning Administrator shall investigate any purported violation of performance standards, and,

If there is reasonable ground for the same,

Shall notify the Board of the occurrence, or existence of, a probable violation thereof.

The Board shall investigate the alleged violation, and for such investigation, shall employ qualified experts.

If, the Board finds that a violation occurred, or exists, after public hearing on due notice, a copy of such finding shall be forwarded to Council.

The services of any qualified experts, employed by the Board to advise in establishing a violation,

Shall be paid by the violator, if such violation is established,

Otherwise by the Municipality.

(Ord. 5-97. Passed 5-4-97.)

F. Interpretation.

The Board of Zoning Appeals shall have the power to hear and decide,

In accordance with the provisions of this Zoning Ordinance,

Interpretations of the Zoning District Map or

For decisions upon other special questions on which the Board is authorized by this Zoning Ordinance to pass.

1137.04 FEES.

A fee as determined by Village Council shall be paid to the Zoning Administrator at the time an application filed.

(Ord. 5-97. Passed 2-4-97.)

1137.05 DECISIONS OF THE BOARD OF ZONING APPEALS.

A decision of the Board of Zoning Appeals shall not become final until the expiration of five (5) days from the date such decision is made,

Unless the Board shall find the immediate taking effect of such decision is necessary for the preservation of property or personal rights, and

Shall so certify on the record.

1137.06 APPEALS FROM THE BOARD OF ZONING APPEALS DECISION TO COUNCIL.

A. Any person, firm or corporation, or

Any officer, department board or agency of the Municipality, or

Any interested elector of the Municipality

Who has been aggrieved or affected by any decision of the Board of Zoning Appeals, may appeal from such decision to Council by filing notice of intent to appeal within five (5) days from the date of the decision and setting forth the facts of the case.

B. Council shall hold a public hearing on such appeal not later than thirty (30) days after such appeal has been filed with its Clerk.

Council, by an affirmative vote of a majority of its members, shall decide the matter.

(Ord. 10-63. Passed 2-10-64.)

INSTRUCTIONS: AREA VARIANCE

The applicant shall complete the appropriate form as part of the application submission.

The Board of Zoning Appeals shall publicly review the submitted form at the Public Hearing, stipulating the responses identified by the applicant.

Each item on the form needs to be addressed.

The Board shall receive the testimony of those in attendance who are

In support of the application, and

In opposition to the request.

The Board may consider written comments that are submitted in advance of the hearing during its review.

At the conclusion of the testimony, the Board shall complete a separate form to become part of the public record. The Board shall summarize its findings concerning each item after reviewing the applicant and hearing the testimony.

Should an issue not be adequately addressed, the Board may continue the hearing to provide adequate time for the necessary material to be submitted to address the Board's concerns.

Failure by the Board to conclude all of noted criteria have been properly addressed will result in denial of the applicant's request.

FINDING OF FACT: AREA VARIANCE

The factors or standards to be considered and weighed for an area variance include, but are not limited to the following:

1. **Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.**

2. **Whether the variance is substantial.**

3. **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.**

4. **Whether the variance would adversely affect the delivery of governmental services (for example: water, sewer, garbage).**

5. **Whether the property owner purchased the property with knowledge of the zoning restriction.**

6. **Whether the property owner's predicament feasibly can be prevented through some method other than a variance.**

7. **Whether the spirit and intent behind the zoning requirements would be observed and substantial justice done by granting the variance.**

DECISION: AREA VARIANCE

It is therefore the decision of the Genoa Board of Zoning Appeals that this area variance petition is _____. Any conditions stated in the minutes are incorporated herein by reference and made a part of this decision.

Adopted this _____ day of _____, 20__.

INSTRUCTIONS: USE VARIANCE

The applicant shall complete the appropriate form as part of the application submission.

The Board of Zoning Appeals shall publicly review the submitted form at the Public Hearing, stipulating the responses identified by the applicant.

Each item on the form needs to be addressed.

The Board shall receive the testimony of those in attendance who are

In support of the application, and

In opposition to the request.

The Board may consider written comments that are submitted in advance of the hearing during its review.

At the conclusion of the testimony, the Board shall complete a separate form to become part of the public record. The Board shall summarize its findings concerning each item after reviewing the applicant and hearing the testimony.

Should an issue not be adequately addressed, the Board may continue the hearing to provide adequate time for the necessary material to be submitted to address the Board's concerns.

Failure by the Board to conclude all of noted criteria have been properly addressed will result in denial of the applicant's request.

FINDING OF FACT: USE VARIANCE

1. **The special circumstances or conditions applying to the building or land in question are peculiar to such lot or property and do not apply generally to other land or buildings in the vicinity and were not created by the applicant.**

2. **The granting of the application is necessary for the preservation and enjoyment of a substantial property right and not merely to serve a convenience to the applicant.**

3. **The authorizing of the variance will not
Impair an adequate supply of light and air to adjacent property, or
Unreasonably increase the congestion in public streets, or
Increase the danger of fire, or
Imperil the public safety, or
Unreasonably diminish or impair established property values
within the surrounding areas, or
In any way impair the health, safety, convenience, or general
welfare of the inhabitants of the Village of Genoa.**

DECISION: USE VARIANCE

It is therefore the decision of the Genoa Board of Zoning Appeals that this use variance petition is _____. Any conditions stated in the minutes are incorporated herein by reference and made a part of this decision.

Adopted this _____ day of _____, 20__.

