



ORDINANCE O-41-2022

AN ORDINANCE TO AMEND CHAPTER 1113 OF THE PLANNING AND ZONING CODE OF THE CITY OF NEW ALBANY, OHIO'S CODIFIED ORDINANCES AS REQUESTED BY THE CITY OF NEW ALBANY

WHEREAS, it has been found that the Codified Ordinances of the City of New Albany, Chapter 1113 needs to be amended to allow for building and structure conditions to be taken into consideration by the Architectural Review Board in addition to site specific conditions when evaluating a waiver request; and

WHEREAS, an amendment is necessary in order to ensure orderly growth; and

WHEREAS, the Architectural Review Board and Planning Commission have held public hearings on separate occasions and received public input into the amendments and recommended approval of the proposed amendment to the codified ordinance.

NOW, THEREFORE, BE IT ORDAINED by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. Portions of Codified Ordinance Chapter 1113 be amended as set forth in Exhibit A, which depicts these amendments in colored ink.

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3. Pursuant to Article 6.07(B) of the New Albany Charter, this ordinance shall become effective thirty (30) days after adoption.

CERTIFIED AS ADOPTED this 13 day of Dec, 2022.

Attest:

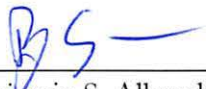


Sloan T. Spalding
Mayor



Jennifer H. Mason
Clerk of Council

Approved as to form:



Benjamin S. Albrecht
Law Director

Legislation dates:

Prepared: 11/21/2022

Introduced: 12/06/2022

Revised:

Adopted: 12/13/2022

Effective: 1/12/2022

CHAPTER 1113 APPEALS, VARIANCES AND WAIVERS¹

1113.01 APPEALS.

- (a) **Taking of Appeals.** Appeals to the Board of Zoning Appeals concerning interpretation or administration of this Ordinance by a staff member may be taken by any person aggrieved including a tenant, or by a governmental officer, department, board, or bureau, unless otherwise specified in this chapter. Such appeal shall be taken within twenty (20) days after the date of the decision, by filing with the Board of Zoning Appeals, a notice of appeal specifying the grounds thereof.
- (b) **Imminent Peril.** An appeal shall stay all proceedings in furtherance of the action appealed from, unless the City Manager's designee certifies to the Board of Zoning Appeals, after notice of appeal shall have been filed with him, that by reason of facts stated in the application a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may, on due cause shown, be granted by the Board of Zoning Appeals, after notice to the City Manager's designee or by judicial proceedings.

(Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1113.02 NATURE OF VARIANCE AND WAIVER.

On a particular property, extraordinary circumstances may exist making a strict enforcement of the applicable development standards of the Zoning Ordinance unreasonable and, therefore, procedures for variances and waivers from development standards are provided to allow the flexibility necessary to adapt to changed or unusual conditions, both foreseen and unforeseen, under circumstances which do not ordinarily involve a change of the primary use of the land or structure permitted.

(Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1113.03 APPLICATION FOR VARIANCES AND APPEALS.

Any person owning or having an interest in property, may file an application to obtain a variance or appeal from the decision of the City Manager's designee.

The application of a variance or an appeal shall be made on such forms as prescribed by staff and shall contain the following information:

- (a) Name, address and phone number of the applicant.
- (b) Legal description of property as recorded in Franklin County Recorder's office.
- (c) Each application for a variance or appeal shall refer to the specific provisions of this Ordinance which apply.

¹Cross reference(s)—Board of Zoning Appeals - see CHTR. 10.03 et seq.;
Appeals from zoning decisions - see ORC 713.11, Ch. 2506

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- (d) The names and addresses of all property owners within two hundred (200) feet, contiguous to, and directly across the street from the property, as appearing on the Franklin County Auditor's current tax list.
 - (e) A narrative statement explaining the following:
 - (1) The use for which variance or appeal is sought.
 - (2) Details of the variance or appeal that is applied for and the grounds on which it is claimed that the variance or appeal should be granted, as the case may be.
 - (3) The specific reasons why the variance or appeal is justified according to this chapter.
 - (4) Such other information regarding the application for appeal as may be pertinent or required for appropriate action by the Board of Zoning Appeals.
 - (f) A plot plan drawn to an appropriate scale showing the following:
 - (1) The boundaries and dimensions of the lot.
 - (2) The nature of the special conditions or circumstances giving rise to the application for approval.
 - (3) The size and location of existing and proposed structures.
 - (4) The proposed use of all parts of the lots and structures, including accesses, walks, off-street parking and loading spaces, and landscaping.
 - (5) The relationship of the requested variance to the development standards.
 - (6) The use of land and location of structures on adjacent property.

(Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1113.04 SUPPLEMENTARY CONDITIONS AND SAFEGUARDS.

In granting any appeal or variance, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the appeal or variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 1109.99. Under no circumstances shall the Board of Zoning Appeals grant an appeal or variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

(Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1113.05 PUBLIC HEARINGS AND NOTICE.

- (a) Public Hearing. The Board of Zoning Appeals shall hold a public hearing within thirty (30) days after receipt of an application for an appeal or variance from staff.
- (b) Notice. Before conducting the required public hearing, notice of the hearing shall be given in one or more newspapers of general circulation in the Municipality at least seven (7) 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 or variance.

Written notice of the required public hearing shall be mailed by first class mail, at least ten (10) days before the day of the hearing to owners of property within two hundred (200) feet from, contiguous to, and directly across the street from the property being considered.

(Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1113.06 ACTION BY THE BOARD OF ZONING APPEALS.

Within thirty (30) days after the public hearing, the Board of Zoning Appeals shall either approve, approve with supplementary conditions, or disapprove the request for appeal or variance. The Board of Zoning Appeals shall only approve a variance or approve a variance with supplementary conditions if the following findings are made:

- (a) That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.
- (b) That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.
- (c) That the special conditions and circumstances do not result from the action of the applicant.
- (d) That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.
- (e) That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.
- (f) Certified copy of the Board's decision shall be transmitted to the applicant, or appellant, and a copy shall be filed with the Community Development Department.

(Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1113.07 CERTIFICATE OF ZONING COMPLIANCE.

A certificate of zoning compliance may be issued only within the period of one year from the date of final approval by the Board of Zoning Appeals.

(Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1113.08 ACTION BY BOARD OF ZONING APPEALS.

Within thirty (30) days after the public hearing pursuant to Section 1113.05 or within thirty (30) days of the application if a hearing is not held, the Board of Zoning Appeals shall either approve, approve with supplementary conditions as specified in Section 1113.04, or disapprove the request for appeal or variance. If the application is approved, or approved with supplementary conditions, the Board of Zoning Appeals shall make a finding that the reasons set forth in the application justify the granting of the variance that will make possible a reasonable use of the land, building or structure. If the request for appeal or variance is denied, the applicant may seek relief through the Court of Common Pleas. A written copy of the Board's decision and findings will be provided to the applicant.

(Ord. O-08-2011. Passed 5-17-11.)

1113.09 WAIVERS.

Where specifically defined within the Zoning Ordinance, deviations from certain development standards are subject to the waiver process. A waiver to the standards may be approved by the Architectural Review Board (ARB) upon the request of an applicant as part of a certificate of appropriateness application. In considering a request for a waiver, the ARB shall conduct a public meeting in conjunction with the certificate of appropriateness.

(Ord. O-08-2011. Passed 5-17-11.)

1113.10 APPLICATION FOR WAIVER.

An applicant who wishes to have a requirement of the Zoning Ordinance waived must apply to the ARB through city staff for said waiver in conjunction with a certificate of appropriateness application that will be reviewed by the Architectural Review Board. The applicant must indicate the nature of the waiver sought and provide a statement explaining why the waiver should be granted. Any drawings or other materials needed to support the application, as determined by city staff, shall be submitted with the waiver request.

(Ord. O-08-2011. Passed 5-17-11.)

1113.11 ACTION BY THE ARCHITECTURAL REVIEW BOARD.

Within thirty (30) days after the public meeting, the ARB shall either approve, approve with supplementary conditions, or disapprove the request for a waiver. The ARB shall only approve a waiver or approve a waiver with supplementary conditions if the ARB finds that the waiver, if granted, would:

- (a) Provide an appropriate design or pattern of development considering the context in which the development is proposed and the purpose of the particular standard. In evaluating the context as it is used in the criteria, the ARB may consider the relationship of the proposed development with adjacent structures, the immediate neighborhood setting, or a broader vicinity to determine if the waiver is warranted;
- (b) Substantially meet the intent of the standard that the applicant is attempting to seek a waiver from, and fit within the goals of the Village Center Strategic Plan, Land Use Strategic Plan and the Design Guidelines and Requirements;
- (c) Be necessary for reasons of fairness due to unusual building, structure, or site - specific condition~~constraints~~; and
- (d) Not detrimentally affect the public health, safety or general welfare.

(Ord. O-08-2011. Passed 5-17-11.)