

ARTICLE 20

ADMINISTRATION

20.01

OFFICE OF ZONING INSPECTOR CREATED:

A Zoning Inspector designated by the City Council shall administer and enforce this ordinance. He may be provided with the assistance of such other persons as the Council may authorize.

20.02

DUTIES OF ZONING INSPECTOR:

For the purpose of this ordinance, the Zoning Inspector shall have the following duties:

- (1) Upon finding that any of the provisions of this ordinance are being violated shall notify in writing by certified mail the person responsible for such violation(s) ordering the action necessary to correct such violation;
- (2) Order discontinuance of illegal uses of land, buildings or structures;
- (3) Order removal of illegal building or structures or illegal additions or structural alterations;
- (4) Order discontinuance of any illegal work being done;
- (5) Issue receipts and maintain a record thereof for all fees collected;
- (6) Take any other action authorized by this ordinance to ensure compliance with or to prevent violation(s) of this ordinance. This may include the issuance of and action on zoning permits and certificates of zoning compliance and such similar administrative duties as are permissible under the law, to include the maintenance of records as required by Section 19.09.

20.03

PLANNING BOARD CREATED:

A Planning Board shall be created in accordance with Sections 8.01, 8.02 and 8.03 of the Bellbrook Charter. The Planning Board shall have the powers of zoning and all the power and authority conferred upon city planning boards by the Ohio Revised Code and such other

duties as may be imposed upon it by the Municipal Administrative Code and by the Bellbrook Charter.

20.04

DUTIES OF PLANNING BOARD:

For the purpose of this ordinance the Planning Board shall have the following duties:

- (1) Initiate proposed amendments to this ordinance;
- (2) Review all proposed amendments to this ordinance and make recommendations to the City Council as specified in Article 21;
- (3) Review all planned unit developments and make recommendations to the City Council provided in Article 17;
- (4) Review all requests for determination of similar uses; and
- (5) Perform other duties specified in the Zoning Ordinance.

20.05

PROCEEDINGS OF PLANNING BOARD:

The Board shall adopt rules necessary to the conduct of its affairs in keeping with the provisions of this ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. All meetings shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions all of which shall be a public record and be immediately filed in the office of the Board. The official copy of the minutes of all proceedings will be signed by the Board Chairman and Secretary.

20.06

BOARD OF ZONING APPEALS CREATED:

A Board of Zoning Appeals shall be created in accordance with Sections 8.05 and 8.06 of Bellbrook Charter. The Board of Zoning Appeals shall elect its own officers annually. Three (3) members of the Board of Zoning Appeals shall constitute a quorum for the conducting of business. It shall require a majority of votes to pass a motion or take official action.

20.07

DUTIES OF THE BOARD OF ZONING APPEALS:

In exercising its duties the Board may, as long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the Zoning Inspector from whom the appeal is taken. The majority of votes of the sitting Board shall be necessary to reverse any order, requirements, decision or determination of the Zoning Inspector, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to affect any variation in the application of this ordinance. For the purpose of this ordinance the Board has the following specific responsibilities:

- (1) Administrative review;
- (2) Determination of district boundary location;
- (3) Granting conditional use permits; and
- (4) Authorizing variances.

20.08

PROCEEDINGS OF THE BOARD OF ZONING APPEALS:

The Board shall adopt rules necessary to the conduct of its affairs in keeping with the provisions of this ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. The Chairman, or in his absence the acting chairman, may compel the attendance of witnesses. Oral testimony given as evidence must be given under oath. Oaths will be administered by a notary public. All meetings shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each appeal considered by the Board, and the section of this ordinance where applicable which the Board has considered in approving or disapproving any petition or other matter brought before the Board, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board. The official copy of the minutes of all proceedings will be signed by the Board Chairman and Secretary.

20.09

HEARING OF BOARD OF ZONING APPEALS:

The Board of Zoning Appeals shall fix a reasonable time not to exceed 30 days from receipt of application, petition or appeal, for the hearing. Application, petition or appeal shall be filed with the Zoning Inspector at least five days prior to the next regularly scheduled meeting. The Board shall give at least ten (10) days notice of the time and place of such hearing, to the enforcing officer, and to the owners of record of property within three hundred (300) feet of the premises in question, such notice to be delivered personally or by mail addressed to the respective owners at the address given on the last assessment roll. Any party may appear at such hearing in person, by agent or by attorney. Before holding the public hearing, notice of such hearing shall be posted in full in not less than five (5) of the most public places in the municipality as determined by Council 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 hearing.

20.10

ACTION BY THE BOARD OF ZONING APPEALS:

Within thirty (30) days after a public hearing, the Board of Zoning Appeals shall either approve, approve with supplementary conditions or disapprove the request or application before the Board. If an application for conditional use is approved or approved with modifications, the Board shall direct the Zoning Inspector to issue the conditional use permit listing the specific conditions specified by the Board for approval. Appeals from Board decisions shall be made in the manner specified in Section 20.11.

20.11

DUTIES OF ZONING INSPECTOR, BOARD OF ZONING APPEALS, LEGISLATIVE AUTHORITY AND COURTS ON MATTERS OF APPEAL:

It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Inspector, and that such questions shall be presented to the Board only on appeal from the decision of the Zoning Inspector, and that recourse from the decisions of the Board shall be to the courts as provided by law. It is further the intent of this ordinance that the duties of the City Council in connection with this ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise. The

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procedure for deciding such questions shall be as stated in this section and this ordinance. Under this ordinance the City Council shall have only the duties of considering and adopting or rejecting proposed amendments or the repeal of this ordinance as provided by law, and of establishing a schedule of fees and charges as stated in Ordinance No. 75-1. Nothing in this ordinance shall be interpreted to prevent any official of the City from appealing a decision of the Board to the courts as provided in Chapters 2505 and 2506 of the Ohio Revised Code. Any such appeal shall be made within ten (10) days of the Board's written decision.

20.12

PROCEDURES AND REQUIREMENTS FOR ADMINISTRATIVE REVIEW:

Administrative reviews shall conform to the procedures and requirements of Sections 20.06 through 20.12 of this ordinance. As specified in Section 20.07, the Board of Zoning Appeals has appellate jurisdiction relative to administrative reviews.

20.12.1

ADMINISTRATIVE REVIEW:

Appeals will be heard and decided only in such cases where it is alleged there is an error in any order, requirement, decision or determination made by the enforcing officer in the enforcement of this ordinance. Appeals may be taken by any person aggrieved or by any officer of the City affected by any decision of the enforcing officer. Such appeal shall be taken within twenty (20) days after the decision. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the enforcing officer, or to decide in favor of the applicant on any matter upon which they are required to pass under the terms of this ordinance.

20.12.2

STAY OF PROCEEDINGS:

An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Inspector from whom the appeal is taken certifies to the Board of Zoning Appeals after the notice of appeal is filed with him, that by reason of facts stated in the application, a stay would, in his 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, on notice to the Zoning

Inspector from whom the appeal is taken on due cause shown.

20.13

PROCEDURES AND REQUIREMENTS FOR VARIANCES:

To vary the strict application of any of the requirements of this ordinance in the case of exceptionally irregular, narrow, shallow or deep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship - not economic in nature - that would deprive the owner of reasonable use of the land or building involved but in no other case. The fact that another use would be more profitable is not a valid basis for legally granting a variance. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance. The variance requested shall not alter the essential character of the locality, nor be in conflict with the Comprehensive Master Plan. In making this determination, the Board of Zoning Appeals shall be advised by the recommendation of the Planning Board. In cases involving properties situated within the Village District, as defined by Article 14, Section 14.02 of the Bellbrook Zoning Code, the Village Review Board shall, when possible, make a recommendation to the Board of Zoning Appeals regarding the disposition of the variance request.

20.13.1

PROCEDURE FOR CONSIDERATION OF PETITIONS FOR VARIANCE:

The procedure for the consideration of petitions for variances shall be:

(1) The Board of Zoning Appeals shall make a finding that the reasons set forth in the application are valid and justify the granting of the variance. The Board shall also determine if the variance is the minimum variance that will make possible the reasonable use of land, building or structure.

(2) Under no circumstances shall the Board of Zoning Appeals grant a variance which will permit a use which is not permitted in the district involved.

(3) Conditions:

The Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this ordinance and the recommendation of the Planning Board. The Board of Zoning Appeals shall require a bond or irrevocable letter of credit to assure conformance to such conditions and safeguards as the Board may require.

(4) Violation of such conditions and safeguards when such are made a part of the terms under which a Variance is granted, shall cause the bond mentioned in (c) above to be forfeited and shall be deemed in violation of this ordinance and punishable under Section 19.12 of this ordinance.

(5) Public Hearings:

Prior to taking action on a request for a variance the Board of Zoning Appeals shall hold a public hearing and give notice to property owners as in Section 20.09 of this ordinance.

20.13.2

APPLICATION AND STANDARDS FOR VARIANCES:

A variance from the terms of this ordinance shall not be granted by the Board of Zoning Appeals unless and until a written application for a variance is submitted to the Zoning Inspector and the Board of Zoning Appeals containing:

- (1) Name, address and phone number of applicants;
- (2) Legal description of property; and a site plan based on an accurate survey showing existing and/or future building locations and the locations of buildings on adjacent properties. This site plan should be prepared by a registered surveyor attesting to the accuracy of same;
- (3) Description of nature of variance requested;
- (4) Variances from the terms of the Zoning Ordinance shall be granted only where the property owner shows that the application of a zoning requirement to the property is inequitable causing the property owner practical difficulties in the

use of the property. Factors to consider include, but are not limited to:

(a) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

(b) Whether the variance is substantial;

(c) 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;

(d) Whether the variance would adversely affect the delivery of governmental services such as water, sanitary sewer or garbage removal;

(e) Whether the property owner purchased the property with knowledge of the zoning restriction;

(f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and

(g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. The Board shall determine, after and weighing the factors described above and any other factors the Board deems relevant, whether the property owner has shown practical difficulties so inequitable as to justify granting a variance to the property owner.

20.13.3

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 19.12 of this ordinance.

20.14

PROCEDURE AND REQUIREMENTS FOR APPROVAL OF CONDITIONAL USE PERMITS:

It is recognized that an increasing number of new kinds of uses are appearing daily, and that many of these and some other more conventional uses possess characteristics of such unique and special nature relative to location, design, size, method of operation, circulation, and public facilities that each specific use must be considered individually. These specific uses that are conditionally permitted under the provisions of this ordinance shall follow the procedures and requirements set forth in this section.

20.14.1

GENERAL:

The following requirements shall be complied with prior to any approval or denial of a conditional use permit by the Board of Zoning Appeals:

- (1) A written application for a conditional use is submitted indicating the section of this ordinance under which the conditional use is sought and stating the grounds on which it is requested per Section 20.14.2.
- (2) A public hearing shall be held as specified in Section 20.09 of this ordinance.
- (3) The Board of Zoning Appeals shall determine:
 - (a) That it has the authority to grant the request.
 - (b) That the granting of the conditional use will not adversely affect the neighborhood in which the conditional use is to be located.
 - (c) That the conditional use is not one which is contrary to the policies of the Comprehensive Master Plan of the Municipality of Bellbrook. In making this determination the Board shall be advised by the recommendation of the Planning Board.

20.14.2

CONTENTS OF APPLICATION FOR CONDITIONAL USE PERMIT:

An application for conditional use permit shall be filed with the Chairman of the Board of Zoning Appeals by at least one owner or lessee of property for which

such conditional use is proposed. At a minimum, the application shall contain the following information:

- (1) Name, address, and phone number of applicant;
- (2) Legal description of property;
- (3) Description of existing use;
- (4) Zoning district;
- (5) Description of proposed conditional use;
- (6) 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, yards, and such other information as the Board may require to determine if the proposed conditional use meets the intent and requirements of this ordinance;
- (7) A narrative statement evaluating the effects on adjoining property; the effect of such elements as noise, glare, odor, fumes and vibration on adjoining property; a discussion of the general compatibility with adjacent and other properties in the district; and the relationship of the proposed use to the comprehensive plan;
- (8) Such other information as may be required in Section 20.14.

20.14.3

GENERAL STANDARDS APPLICABLE TO ALL CONDITIONAL USES:

In addition to the specific requirements for conditionally permitted uses as specified in Section 20.14.1, 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:

- (1) Is in fact a conditional use as established under the provisions of the Zoning Ordinance for the zoning district involved;
- (2) Will be harmonious with and in accordance with the general objectives, or with any specific

objective of the Comprehensive Plan and/or the Zoning Ordinance;

(3) 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;

(4) Will not be hazardous or disturbing to existing or future neighboring uses;

(5) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

(6) 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;

(7) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;

(8) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares;

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

20.14.4

SUPPLEMENTAL SAFEGUARDS AND CONDITIONS:

In granting any conditional use permit, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity to the provisions of this ordinance and the recommendation of the Planning Board. The Board of Zoning Appeals shall require a bond to

assure conformance to such conditions and safeguards as may be necessary. Violation of such conditions and safeguards shall cause the performance bond mentioned above to be forfeited and shall be deemed a violation of this ordinance and punishable under Section 19.12.

20.14.5

EXPIRATION OF CONDITIONAL USE PERMIT:

A conditional use permit shall expire in one (1) year after it is issued unless actual construction has taken place or is underway except as provided elsewhere in this ordinance.

20.15

DETERMINATION OF SIMILAR USES:

The Planning Board will determine if uses not specifically mentioned in this ordinance are similar to uses permitted within a district.

20.16

DETERMINATION OF DISTRICT BOUNDARY LOCATION:

The Board of Zoning Appeals shall determine the exact location of any district boundary if there is uncertainty as to exact location thereof. In making such determination the Board shall be guided by the provisions of Section 4.03.

20.17

AMENDMENT LIMITATION:

Petitions for zoning amendment, conditional use permits or variances concerning any parcel of property, portion thereof, or use thereon shall not be accepted for consideration more than once during any consecutive twelve (12) month period.