

ORDINANCE NO. 63-2019

INTRODUCED BY: Council as a Whole and Mayor James Graven

AN ORDINANCE AMENDING THE BOARD AND COMMISSIONS ADMINISTRATIVE PROCEDURES IN CHAPTER 1232, SPECIFICALLY, SECTION 1232.07 “APPEALS,” SECTION 1232.08 “VARIANCES,” AND 1232.09 “DETERMINATION OF SIMILAR USES” AND DECLARING AN EMERGENCY

WHEREAS, Olmsted Falls Charter changes were passed by the electorate in November of 2017 merging the Zoning Boards and Commissions within the city; and

WHEREAS, it is deemed appropriate to amend and bring the Codified Ordinances of the City of Olmsted Falls in conformance with the Charter to reflect those mergers. Now therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OLMSTED FALLS, CUYAHOGA COUNTY, OHIO, THAT:

SECTION 1. That Sections 1232.07; 1232.08; and 1232.09 of current Chapter 1232 are hereby amended to read as shown on Exhibit “A” attached hereto and incorporated herein by reference, and current Sections are therefore repealed.

SECTION 2. All prior legislation inconsistent with this legislation in whole or in part are hereby repealed to the extent necessary to avoid conflict with this legislation.

SECTION 3. Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 4. This Ordinance is hereby declared to be an emergency measure for the immediate preservation of the health, safety and welfare of the residents of the City of Olmsted Falls for the further reason that it is immediately necessary to update the Codified Ordinance to be in compliance with the City Charter. Therefore, this Ordinance shall take effect immediately upon the affirmative vote of not less than five (5) members elected to Council, and signature by the Mayor, or otherwise at the earliest time allowed by law.

Paul Stibich, President of Council

PASSED: _____

APPROVED: _____
James Graven, Mayor *Date*

APPROVED AS TO FORM: _____
Andrew D. Bemer, Director of Law

ATTEST: _____
Angela Mancini, Clerk of Council

First Reading: _____

Second Reading: _____

Third Reading: _____

	Yea	Nay
Stibich	_____	_____
Jones	_____	_____
Munteanu	_____	_____
Gorski	_____	_____
Nicolay	_____	_____
Duncan	_____	_____
Fenrich	_____	_____

Exhibit "A"

CHAPTER 1232 – Administrative Procedures

1232.07 APPEALS.

Appeals to the ~~Board of Zoning Appeals~~ **PLANNING AND ZONING COMMISSION** may be taken by any person, firm, or corporation, or by any officer, board, or department of the City, deeming himself, herself or itself to be adversely affected by the decision of any official administering or enforcing the regulations in this Zoning Code.

(a) Filing. Notice of appeal shall be filed in the office of the Zoning Administrator within thirty days after the date of any adverse order, requirement, decision, or determination. Such written notice of appeal shall specify therein the grounds and reasons for the appeal and shall be accompanied by all necessary plans, documents, or other descriptive material pertinent to the case. Upon the filing, such notice of appeal shall be transmitted to the ~~Board of Zoning Appeals~~ **PLANNING AND ZONING COMMISSION** at its next meeting.

(b) Notice of Public Hearing. When a notice of appeal has been filed in proper form with the ~~Board~~ **COMMISSION**, the Secretary of the ~~Board~~ **COMMISSION** shall set the date for a public hearing of such appeal. Notice of such hearing shall be given to property owners within 500 feet of the boundaries of the tract or lot under appeal, by first-class mail, at least five days prior to such hearing. Notices shall state the time, place, and object of the hearing. All notices shall be sent to addresses given in the application; otherwise to the addresses given in the last assessment roll.

(c) Public Hearing. The appellant may be represented in person or by his or her agent at the hearing. A report of the facts in the case shall be presented by the Zoning Administrator. Any resident or property owner affected or potentially affected by the appeal shall be given the opportunity to be heard. The ~~Board~~ **COMMISSION** shall make a determination on such appeal within a reasonable period of time according to the criteria specified in this section.

(d) Recess of Hearing. The ~~Board~~ **COMMISSION** may recess such hearings in order to permit additional information to be presented, or to cause further notice to be given to other property owners likely to be affected by such appeal. If the time and place of the continued hearing is publicly announced at the time of adjournment, no further notice shall be required.

(e) Stay of Proceedings. Once an appeal is filed concerning any type of action being undertaken, such action shall be stopped and shall not be continued until further directed by a decision of the ~~Board of Zoning Appeals~~ **PLANNING AND ZONING COMMISSION**.

(f) Decision of the ~~Board~~ **COMMISSION**. Within its powers, the ~~Board of Zoning Appeals~~ **PLANNING AND ZONING COMMISSION** may reverse or affirm, wholly or in part, or modify the requirement to be done, and to that end shall have all the powers of the officer from whom the appeal is taken. The ~~Board~~ **COMMISSION** shall render a decision on the appeal without unreasonable delay. If the ~~Board~~ **COMMISSION** fails to act within sixty days from the date the appeal was filed, or an extended period of time as may be agreed upon, the appellant may assume the appeal has been denied.

(g) Notification of ~~Board's~~ **COMMISSION'S** Decision. A certified copy of the ~~Board's~~ **COMMISSION'S** decision shall be transmitted to the appellant, the Zoning

Administrator, and the Clerk of Council within three days after the ~~Board~~ **COMMISSION** makes its decision. Such decision shall be binding on the Zoning Administrator. For applications that are approved, the Zoning Administrator shall incorporate any conditions attached by the ~~Board~~ **COMMISSION** into the certificate to be issued. No decision of the ~~Board~~ **COMMISSION** shall become final until thirty days from the date such decision is transmitted to the appellant, unless the ~~Board~~ **COMMISSION** finds that the immediate effectuation of such decision is necessary for the protection of the public health, safety, and general welfare, and the ~~Board~~ **COMMISSION** shall so certify on the record.

(h) Appeals to Council. Any person who is aggrieved by a decision of the ~~Board of Zoning Appeals~~ **PLANNING AND ZONING COMMISSION WITH REGARD TO AN APPEAL** may, within thirty days after such decision is rendered, appeal to Council. After reviewing the ~~Board's~~ **COMMISSION'S** decision, Council may reverse or modify the decision by an ordinance approved by a two-thirds majority vote of its membership.

1232.08 VARIANCES.

The ~~Board of Zoning Appeals~~ **PLANNING AND ZONING COMMISSION** may authorize upon appeal in specific cases such variance from the terms of this Zoning Code as will not be contrary to the public interest according to the following procedures:

(a) Application Requirements. An application for a variance shall be filed with the Zoning Administrator for review by the ~~Board of Zoning Appeals~~ **PLANNING AND ZONING COMMISSION** upon the forms provided, and shall be accompanied by the following requirements necessary to convey the reason(s) for the requested variance:

(1) The name, address, and phone number of applicant(s), and the names and addresses of all property owners within 500 feet of the boundaries of the tract or lot under appeal;

(2) Proof of ownership, legal interest, or written authority;

(3) A description of the property or portion thereof;

(4) A description or nature of the variance requested;

(5) Narrative statements establishing and substantiating the justification for the variance pursuant to subsections (c) and (d) below;

(6) Site plans, floor plans, elevations, and other drawings at a reasonable scale to convey the need for the variance;

(7) Payment of the application fee as established by Council; and

(8) Any other documents deemed necessary by the Zoning Administrator.

Upon receipt of a written request for a variance, the Zoning Administrator shall, within a reasonable amount of time, make a preliminary review of the request to determine whether such application provides the information necessary for review and evaluation. If it is determined that such application does not provide the information necessary for such review and evaluation, the Zoning Administrator shall so advise the applicant of the deficiencies and shall not further process the application until the deficiency is corrected.

(b) Public Hearing by the ~~Board~~ **COMMISSION**. According to the procedures established for appeals in Section 1232.07, the ~~Board~~ **COMMISSION** shall hold a public hearing and give notice of the same.

(c) Criteria and Findings for Granting of Variances. The ~~Board~~ **COMMISSION** may authorize variances from the literal or exact enforcement of the requirements and specification of this Zoning Code, in accordance with the following criteria. There are

two categories of variances: those relating to use and those relating to area requirements.

(1) Use variances. In the case of a variance for use, the determination of similar uses is the role of the Planning **AND ZONING** Commission, as stated in Section 1232.09. If a variance from the decision of the Planning **AND ZONING** Commission is requested, the **Board COMMISSION** may authorize a variance if it determines that the variance will result in no substantial detriment to any surrounding property, that the intent and purpose of this Zoning Code are not impaired, and when one or more of the following apply:

A. Unnecessary hardship. Where the literal interpretation of this Zoning Code would result in unnecessary hardships peculiar to the property involved and not based on conditions created by the owner, the **Board COMMISSION** may grant relief therefrom. For purposes of this paragraph, the limiting of possibilities of economic advantage do not constitute unnecessary hardship.

B. Exceptional circumstances. Where there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties or classes of uses in the same zoning district. If there is a general or recurrent condition or situation, the **Board COMMISSION** shall recommend to the Planning **AND ZONING** Commission that there be a general rule or regulation for such situation.

(2) Variances relating to specific area requirements. For the purpose of this Zoning Code, an area variance shall include any variance related to a numerical requirement governing building setbacks, building height, yards, signs, parking, landscaping, and other similar standards regulating the bulk of buildings and structures. An area variance shall not include an increase in the maximum density. The **Board COMMISSION** shall review each application for an area variance to determine if it complies with the purpose and intent of this Code and shall review the evidence to determine if such demonstrates that the literal enforcement of this Code will result in the following:

A. Practical difficulty. The factors to be considered and weighed by the **Board COMMISSION** in determining practical difficulty include (but are not limited to) the following:

1. Whether the property owner purchased the property with knowledge (or would be expected to have known) of the zoning restriction. And whether the special circumstances noted by the applicant exist as a result of actions of the owner;

2. Whether the property in question will yield a reasonable return under the strict interpretation of this Zoning Code;

3. Whether there can be any beneficial use of the property without the variance;

4. Whether the property owner's predicament can be obviated through some method other than granting the variance;

5. Whether the variance is substantial;

6. Whether the essential character of the neighborhood would be substantially altered as a result of the variance; or

7. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, trash pickup.

B. Cumulative Effect. The **Board COMMISSION** shall consider what the cumulative effect would be if all lots with the same situation as the applicant for the variance were to be granted the requested variance.

C. No detrimental effects. The **Board COMMISSION** must find that there will be no substantial detriment to any surrounding property and that the intent and purpose of

this Zoning Code are not impaired.

(d) Conditions. The ~~Board~~ **COMMISSION** may attach conditions regarding the location, character, or size of a structure or the location, character, size, or hours of operation of a use, prior to granting a variance, as it deems necessary for the public interest.

(e) Guarantees. In granting a variance, the ~~Board~~ **COMMISSION** may require a guarantee or a performance bond to ensure that such variance or attached conditions are and will be complied with.

(f) Action by the ~~Board~~ **COMMISSION**. The ~~Board~~ **COMMISSION** shall either approve, approve with supplementary conditions as specified in subsection (e) hereof, or disapprove the request for a variance. The ~~Board~~ **COMMISSION** shall further provide a statement in writing describing the criteria, findings, and/or issues of “unnecessary hardship” or “practical difficulty” pursuant to subsection (c) hereof that justify the granting or denial of the variance.

(g) Term and Extension of Variance. Variances shall not be assignable and shall expire twelve months from the date of their enactment or at a time specified as a condition of the variance, unless prior thereto, the applicant commences actual construction in accordance with the granted variance. There shall be no modification of variances except by further consideration of the ~~Board of Zoning Appeals~~ **PLANNING AND ZONING COMMISSION**. Requests for renewal of expired variances shall be considered to be the same as an application for a variance and shall meet all requirements for application and review pursuant to this section.

1232.09 DETERMINATION OF SIMILAR USES.

Where a specific use is proposed that is not listed or provided for in this Zoning Code, the Planning **AND ZONING** Commission may make a determination that the proposed use is of the same general character as the uses permitted in the district in which the use is proposed, or is similar to a particular use permitted in the district in which the use is proposed, and is determined to be consistent with the purpose statement for the district in which such use is proposed. Such additional uses shall not include those uses which are permitted or prohibited in any other district, or which, in the judgment of the Planning **AND ZONING** Commission, would likely be objectionable in the district in which such use is proposed. If the Commission determines that a use is substantially similar to a specific use listed in this Code, the substantially similar use may be permitted in those districts which allow the principal or conditional use that is most similar. The initial determination of a similar use shall be approved in accordance with the conditional use procedures set forth in Section 1232.04, including the requirement for a public hearing. Following such a determination, the similar use shall be considered to be added to the permitted use list for the district, either as a permitted principal use or as a conditional use, as determined by the Planning **AND ZONING** Commission.