

TEMPORARY ORDINANCE NO. 23-16

PERMANENT ORDINANCE NO. 28-16

AN ORDINANCE TO REPEAL AND REPLACE LANCASTER CODIFIED ORDINANCE PART ELEVEN – PLANNING AND ZONING CODE, TITLE THREE – ZONING AND PROPERTY RESTRICTIONS, CHAPTER 1157 – BOARD OF ZONING APPEAL, OF THE CODIFIED ORDINANCES OF THE CITY OF LANCASTER, AND TO DECLARE AN EMERGENCY

WHEREAS, Ohio Revised Code Chapter 2505 provides thirty (30) days for the filing of a notice of appeal from an administrative decision; and

WHEREAS, Lancaster Codified Ordinance Chapter 1157 – Board of Zoning Appeal, provides ten (10) days for the filing of a notice of appeal in Section 1157.07 – Appeals from an Administrative Official, Subsection (b) – Notice of Appeal and in Section 1157.11 – Appeals to the Common Pleas Court, Subsection (a) – Procedure; and

WHEREAS, the Fifth District Court of Appeals recently held that ten (10) days is not sufficient time for the filing of a notice of appeal; and

WHEREAS, this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to comply with the requirements of the Ohio Revised Code and the recent holding of the Fifth District Court of Appeals; and

WHEREAS, the City Planning Commission approved on September 8, 2016 amendments to Chapter 1157 of the Codified Ordinances of the City of Lancaster after conducting a public hearing on the matter and attached hereto as Exhibit “A”; and

WHEREAS, the City must pass an ordinance to amend the zoning code;

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO:

SECTION 1. That Part Eleven – Planning and Zoning Code, Title Three – Zoning and Property Restrictions, Chapter 1157 - Board of Zoning Appeals, be replaced pursuant to Exhibit “A” attached hereto.

SECTION 2. That existing Part Eleven – Planning and Zoning Code, Title Three – Zoning and Property Restrictions, Chapter 1157 - Board of Zoning Appeals, is repealed in its entirety.

SECTION 3. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to comply with the requirements of the Ohio Revised Code and the recent holding of the Fifth District Court of Appeals.

SECTION 4. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all such deliberations of this Council and of any of its committees that

resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Passed: 10/24/16 after 3rd reading. Vote: Yeas 9 Nays 0

Approved: 10/24/16

Clerk: Teresa Lee Sandy

Offered by: Mary R. Tenen

Second by: Jack Hale

Mr B Hays

President of Council

[Signature]

Mayor

Requested by Code Enforcement & Zoning Committee

I, Teresa L. Sandy, Clerk of Council do hereby certify that on _____, 20____ the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

Clerk of Council

(*changes in red)

**CHAPTER 1157
Board of Zoning Appeal**

- 1157.01 Establishment of the Board.**
- 1157.02 Powers of the Board.**
- 1157.03 Proceedings of the Board.**
- 1157.04 Conflict of interest.**
- 1157.05 Notice of public hearing.**
- 1157.06 Fees.**
- 1157.07 Appeals from an Administrative Official.**
- 1157.08 Interpretation.**
- 1157.09 Variances.**
- 1157.10 Special exception.**
- 1157.11 Appeals to the District Court.**
- 1157.12 Compensation.**

1157.01 ESTABLISHMENT OF THE BOARD OF ZONING APPEAL.

(a) There is hereby established a Board of Zoning Appeal of the City of Lancaster with the powers and duties hereinafter set forth. The Board of Zoning Appeal shall consist of five members, who shall be nominated by the Mayor and confirmed by the City Council, and shall serve with pay for a term of three years. Initial appointments will be as follows: two members serving for three years; two members serving for two years; and one member serving for one year. Thereafter all full term appointments shall be for three years.

(b) Vacancies shall be filled for an unexpired term of any member in the manner set forth for appointments to a full term. A Board member may be removed for cause, by the appointing authority after notice, written charges and public hearing. The Board shall organize, elect its chairman, and appoint a secretary and adopt rules necessary to the conduct of its affairs. (Ord. 14-00. Passed 5-22-00.)

1157.02 POWERS OF THE BOARD.

The Board shall have the power to hear appeals from the determinations of an administrative official in enforcing this Code, to grant special exceptions and/or variances, and to make interpretations of the zoning map and text, in accordance with the substantive and procedural standards hereinafter set forth. (Ord. 14-00. Passed 5-22-00.)

1157.03 PROCEEDINGS OF THE BOARD.

Meetings shall be held monthly 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 administer oaths and compel attendance of witnesses. A quorum shall consist of three members of the Board. A minimum of three affirmative votes shall be required to pass a measure. All meetings, deliberations, and voting of the Board 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 immediately filed in the office of the Board and shall be a public record. In all matters, the Board shall decide at the conclusion of the hearing on the application for relief. The notice, filing, and substantive requirements of the Board shall be set forth in the following sections concerning the Board's exercise of a particular power. (Ord. 18-04. Passed 4-12-04.)

1157.04 CONFLICT OF INTEREST.

In the event a member of the Board of Zoning Appeals finds himself or herself in a "conflict of interest" with regard to any matter coming before the Board, said member shall at the beginning of the proceeding declare that a conflict exists and refrain from participating in the hearing and in voting on the issue. If a member of the Board does not declare a conflict, and the petitioner or other Board members perceive that a conflict exists, they may request that the Board member be excluded from the hearing process. If the Board member declines to step down, the matter will be heard by the Board prior to undertaking the scheduled hearing, and the Board by majority vote will determine whether a conflict exists. If the Board finds a conflict to exist, the Board member in conflict will be prohibited from participating in the hearing and voting on the petition. (Ord. 14-00. Passed 5-22-00.)

1157.05 NOTICE OF PUBLIC HEARINGS.

(a) The Board of Zoning Appeal shall give notice and conduct a public hearing before acting on any appeal from an administrative official enforcing this Code, or before granting any special exception, or variance, or minor variance, or exception. The Board shall set forth in an adopted statement of policy a list of variances and exceptions which constitute minor variances or exceptions and such statement of policy shall be approved by the Council of the City of Lancaster.

(b) Ten days notice of public hearing shall be given as follows:

(1) For special exception, variance or appeal from a determination of an administrative official enforcing this Code:

A. By publication in a newspaper of general circulation.

B. By mailing written notice via first class mail to all owners of property within and contiguous to and directly across the street from such parcel or parcels for which a special exception, variance or appeal from a determination of an administrative official enforcing this Code.

(2) For minor variance or exception by mailing written notice to all owners of abutting property of the subject property. Nothing herein shall preclude the Board of Zoning Appeal from requiring the giving of public notice of hearings to all owners of property within and contiguous to and directly across the street from such parcel or parcels for which a minor variance or exception is sought.

(3) The failure of delivery of such notice as provided in (b)(1) and (b)(2) above shall not invalidate any subsequent action of the Board of Zoning Appeals.

(c) The notice shall contain:

(1) The legal description of the property and the street address or approximate location of the property.

(2) The present zoning classification of the property and the nature of the relief sought.

(3) The date, time and place of the hearing.

(d) The applicant shall furnish the names and mailing addresses of all owners of property within and contiguous to and directly across the street from subject parcel or parcels, or in the case of a minor variance or exception, the owners of abutting property of the subject property. Costs of publication shall be billed to the applicant.

(Ord. 14-00. Passed 5-22-00.)

1157.06 FEES.

An application for an appeal from an administrative official enforcing this Code, or any variance or special exception shall be accompanied by the payment of a fee in accordance with the schedule of fees adopted by resolution of City Council of the City of Lancaster. Additionally, the applicant shall pay a fee to cover the costs of publishing notice.

(Ord. 14-00. Passed 5-22-00.)

1157.07 APPEALS FROM AN ADMINISTRATIVE OFFICIAL.

(a) General. An appeal to the Board of Zoning Appeal may be taken by any person aggrieved or by any officer, department, board or bureaus of the city affected, where it is alleged there is error

in any order, requirement, decision or determination made by an administrative official in the enforcement of this Code.

(b) Notice of Appeal. An appeal shall be taken within ~~10~~ 30 days from the determination complained of by filing with the appropriate administrative official and with the Clerk of the Board, a notice of appeal, specifying the grounds thereof. The administrative official, upon receipt of notice, shall forthwith transmit to the Clerk of the Board, certified copies of all the papers constituting the record of said matter. Upon receipt of the record the Clerk shall set the matter for public hearing within 30 days of the filing of the notice of appeal.

(c) Board of Zoning Appeal Action. The Board shall hold the public hearing. At the conclusion of the public hearing the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision or determination of an administrative official enforcing this Code. The Board shall make its findings within 45 days of the filing of the notice of appeal.

(d) Stay of Proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certifies to the Board of Zoning Appeal, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, 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 granted by the Board on due and sufficient cause shown. (Ord. 14-00. Passed 5-22-00.)

1157.08 INTERPRETATION.

(a) The Board shall interpret the text of this Code or the Official Zoning Map upon an appeal from a determination of an administrative official after compliance with the procedural standards of Section 1157.07.

(b) Where a question arises as to the zoning district classification of a particular use, the Board of Zoning Appeal, upon written request of an administrative official may find and determine the classification of the use in question and may, prior to such determination, order the giving of notice and hold a public hearing. Such public hearing shall be held within 30 days of the date of request from the administrative official. At the conclusion of the public hearing, the Board shall rule upon the question. Costs of publication shall be borne by the City. (Ord. 14-00. Passed 5-22-00.)

1157.09 VARIANCES.

(a) General. The Board of Zoning Appeals, upon application, and after hearing and subject to the procedural and substantive standards set forth herein, may grant variances from the terms of this Code. Variances are distinguished as either "use" variances or "area" variances. A "use" variance is an application for a deviation from the permitted uses in a zoning district as opposed to a variance from a zoning restriction on set-backs, bulk, height, etc. An "area" variance is an application for a deviation from the zoning restrictions on set-backs, bulk, height, etc. in a zoning district.

(b) Application.

- (1) A request for a variance may be initiated upon denial of a Zoning Clearance Permit, by completing a Zoning Variance Application. Zoning Variance Applications will be provided by the Zoning Inspector(s) upon request.
- (2) The applicant for a Zoning Variance will pay the required fee as referenced in Section 1157.06 at the time of submitting the application.
- (3) Upon payment of the required fee, the Zoning Inspector(s) will forward the application for the Zoning Variance to the Clerk of the Zoning Board of Appeals. The Clerk shall set a date and time for a public hearing in accordance with the rules established by the Board.

(c) Board of Zoning Appeal Action. The Board shall hold the hearing and upon the concurring vote of three members may grant a variance after finding:

- (1) The Board of Zoning Appeals may grant a use variance only upon a finding by clear and convincing evidence of an “unnecessary hardship”. The factors to be considered and weighed by the Board in determining whether and unnecessary hardship exists include, but are not limited to, the following:
 - A. Whether the requested use variance stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
 - B. Whether the claimed hardship was created by actions of the applicant;
 - C. Whether granting the variance will adversely affect the rights of adjacent property owners;
 - D. Whether granting the variance will adversely affect the public health, safety or general welfare;
 - E. Whether the variance will be consistent with the general spirit and intent of the Zoning Code;
 - F. Whether the variance sought is the minimum which will afford relief to the applicant; and
 - G. Whether there is an economically viable use of the property which is permitted in the zoning district.
- (2) The Board of Zoning Appeals may grant an area variance upon a finding by clear and convincing evidence of “practical difficulty” in meeting Code requirements. The factors to be considered and weighed by the Board in determining whether a property owner has encountered practical difficulties include, but are not limited to, the following:
 - 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 substantial detriment as a result of the variance;
 - D. Whether the variance would adversely affect the delivery of governmental services, for example, water, sewer, garbage, etc.;
 - E. Whether the property owner purchased the property with knowledge of the zoning restriction;
 - F. Whether the property owner’s practical difficulty can be eliminated through some method other than a variance, and;
 - G. Whether the spirit and intent behind the zoning requirement can be observed and substantial justice can be done by granting a variance.

(d) Time Limitation on Variances. A variance which has not been utilized within 24 months from date of the order granting the variance shall thereafter be void, provided that the Board has not extended the time for utilization. For the purpose of this provision, utilization shall mean actual use or the issuance of a building permit, when applicable, provided construction is diligently carried to completion. (Ord. 14-00. Passed 5-22-00.)

1157.10 SPECIAL EXCEPTION.

(a) Powers.

- (1) To grant Special Exception zoning clearance permits for uses listed as Special Exceptions in the various zoning districts, where it is shown that the special use can be granted without substantial detriment to the public good, without substantial impairment of the general purpose and intent of the zoning district in which the use is to be located, and without significant incompatibility with the general character of the neighborhood. In granting a Special Exception, the Board of Zoning Appeal shall have the authority to prescribe appropriate conditions and safeguards in conformance with the purposes and intent of this Code.

(Ord. 45-05. Passed 6-27-05.)

- A. Special exception uses as designated and regulated within the

- permitted principal or accessory use provisions of the zoning districts;
- B. Modification of restrictions as provided within Section 1123.09;
 - C. The change of a nonconforming use as provided in Section 1153.03(f);
 - D. The restoration of a partially destroyed structure, containing a nonconforming use as provided in Section 1153.03(g);
 - E. The restoration of a partially destroyed nonconforming structure as provided in Section 1153.06;
 - F. The modification of a screening requirement, as provided in Section 1123.12(e);
 - G. The modification of a screening requirement, as provided in Section 1149.32(e)(3);
 - H. The modification of the parking and loading requirements as provided in Section 1153.08(c);
 - I. The modification of the requirements and conditions of Section 1149.05(c) regarding antennas and towers;
 - J. The modification of permitted yard obstructions as provided in Section 1123.10(b);
 - K. Permit residential accessory uses and structures on abutting residentially zoned lots which are under common ownership;
 - L. (EDITOR'S NOTE: This subsection was deleted by Ordinance 50-03.
 - M. Reduction of the number of required off-street parking spaces on a lot or may allow the required off-street parking on a lot other than the lot which contains the adult business as provided in Section 1153.08(c);
 - N. Increases in the number of days per year and the number of days within a 30 day period that special event parking is permitted as provided in Section 1149.03(c)(8)F.;
 - O. Sexually oriented businesses that apply for a special exception permit enjoy First Amendment Protection not given other business and therefore the following procedures shall apply in addition to all others:
 - 1. The Board of Zoning Appeals shall issue its written decision with 30 days of the filing of the application.
 - 2. The Board of Zoning Appeals shall consider the following criteria:
 - A. Compliance with all applicable fire and life safety codes.
 - B. Assure that lighting on exterior would illuminate the entire parking lot.
 - C. Meet requirements of Section 1133.06 of this code.
- (2) The grant special exception permits for the enlargement or expansion of nonconforming buildings, except for the floodway as governed by Lancaster Codified Ordinance 1331, where it can be shown that the expansion or enlargement of the nonconforming use can be granted without substantial impairment of the general purpose and intent of the underlying zoning district or floodway ordinance where appropriate, and without significant incompatibility with the general character of the neighborhood. No enlargement or expansion to any nonconforming use shall be more than fifty percent of the total floor area of the original nonconforming building.
 - (3) To impose such requirements and conditions regarding the location, character, and other features of the proposed uses or structures as the board deems necessary to carry out the intent and purpose of the Zoning Code and to otherwise safeguard the public safety and welfare.
 - (4) Upon application by the City Law Director, to revoke any special permit

whose condition has been violated after notice and opportunity to conform have been given.

(b) Application.

- (1) A request for a Special Exception may be initiated upon denial of a Zoning Clearance Permit, by completing a Special Exception Application. Special Exception Applications will be provided by the Zoning Inspector(s) upon request.
- (2) The applicant for a Special Exception will pay the required fee as referenced in Section 1157.06 at the time of submitting the application.
- (3) Upon payment of the required fee, the Zoning Inspector(s) will forward the application for the Special Exception to the Clerk of the Zoning Board of Appeals. The Clerk shall set a date and time for a public hearing in accordance with the rules established by the Board.
(Ord. 14-00. Passed 5-22-00.)

(c) Board of Zoning Appeal Action. The Board of Zoning Appeal shall take action within thirty (30) days from submittal of the application as specified in Section 1157.10 (b) (3) above, unless the applicant and the Board mutually agree to waive this requirement. The Board of Zoning Appeal shall hold the hearing as specified above and, upon concurring vote of at least three members may grant the special exception after finding that the special exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Provided that the Board in granting the special exception shall have the authority to prescribe appropriate conditions and safeguards, may limit the grant of the special exception to a specified period of time, and may require such evidence and guarantee or bond as it may deem necessary to enforce compliance with the conditions attached. The Board shall not entertain any appeal applied for more than thirty (30) days after the date of the order, requirement, decision or determination appealed from or within such different time as may be specifically provided in this Code.
(Ord. 45-05. Passed 6-27-05.)

(d) Time Limitation on Special Exceptions. A special exception which has not been utilized within 24 months from date of the order granting same shall thereafter be void, provided that the Board has not extended the time for utilization. For the purposes of this provision, utilization shall mean actual use or the issuance of a building permit, when applicable, provided construction is diligently carried to completion. (Ord. 14-00. Passed 5-22-00.)

1157.11 APPEALS TO THE COMMON PLEAS COURT.

(a) Procedure. An appeal from any action, decision, ruling, judgment, or order of the Board of Zoning Appeal may be taken by any person or persons aggrieved, or any taxpayer or any officer, department, board or bureau of the City to the Common Pleas Court of Fairfield County by filing with the City Clerk and with the Clerk of the Board within ~~ten~~ 30 days from the date of such action, a notice of appeal, which notice shall specify the grounds of such appeal. No bond or deposit for costs shall be required for such appeal. Upon filing of the notice of appeal, the Board shall forthwith transmit to the Court Clerk of the County, the original or certified copies of all the papers constituting the record in the case, together with the order, decision or ruling of the Board. Said case shall be heard and tried de novo in the Common Pleas Court of Fairfield County, Ohio. An appeal shall be from the action of the Common Pleas Court as in all other civil actions. Costs shall not be allowed against the Board unless it shall appear to the Court that it acted with gross negligence or in bad faith, or with malice in making the decision appealed from.

(b) Stay of Proceedings. An appeal to the Common Pleas Court stays all proceedings in furtherance of the action appealed from unless the Chairman of the Board certifies to the Court Clerk, after notice of appeal shall have been filed, that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. In such case, proceedings shall not be stayed other than by a restraining order granted by the Common Pleas Court.
(Ord. 14-00. Passed 5-22-00.)

1157.12 COMPENSATION.

Compensation for members of the Board of Zoning Appeals shall be established as ten dollars (\$10.00) per application for each member in attendance at the meeting for all meetings beginning September 18, 2001.

(Ord. 30-01. Passed 10-22-01.)