

REQUESTED BY: CITY MANAGER, BILL KOCHER

DATE OF FIRST READING: 10-17-2017 WAIVE RULES? YES ✓ NO
FINAL ACTION DATE: 11-7-2017 VOTE: ✓ YES NO

SUSPENSION OF TWO
READING RULE:

YES	NO
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DENISE LINGO
JENNIFER MOODY
ROBERT PARSONS
JEANNE GEORGE
JUDY PETERSEN
JOE ROETTING
KISHA DOSA
TOTALS

ADOPTION OF
ORDINANCE:

YES	NO
<u>✓</u>	<u> </u>
<u>✓</u>	<u> </u>
<u>✓</u>	<u> </u>
<u>ABSENT</u>	<u> </u>
<u>✓</u>	<u> </u>
<u>✓</u>	<u> </u>
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ORDINANCE NO. 17-1828

An Ordinance Adopting a Zoning Map Amendment for “OB” Office Business District and Assorted Zoning Code Amendments, Additions, Modifications and Deletions

WHEREAS, the City Zoning Code (Chapter 155) has been under review for appropriate changes, and

WHEREAS, the Planning Commission has recommended specific revisions to the Zoning Code (chapter 155),

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MT. HEALTHY, STATE OF OHIO: THAT THE FOLLOWING MODIFICATIONS ARE ~~HEREBY~~ ^{hereby} MADE TO THE MT. HEALTHY ZONING CODE:

Section 1. That Section 155.003 of the Zoning Code is ~~hereby~~ ^{hereby} amended to add the following definitions, additions and deletions:

- I. RESIDENTIAL DISTRICT – Intensity of Use pg. 2
- II. “OB” OFFICE BUSINESS pg. 4
- III. BOARD OF ZOING APPEALS (BZA) pg. 12
- IV. CONDITIONAL USE pg. 17

I. RESIDENTIAL DISTRICT REGULATION – Intensity Of Use

Add the following text that is underlined and in RED and delete the following text that has been ~~stricken~~ in RESIDENTIAL DISTRICT REGULATION – Intensity of Use sections 155.013, 155.023, 155.033, 155.043 and 155.123.

155.013 INTENSITY OF USE.

Except as hereinafter provided in § 155.124, every lot or tract of land shall have a minimum width of 80 feet at the building line and an area of not less than 20,000 square feet, and a maximum density of one dwelling unit per 20,000 square feet of area providing a minimum of 1000 square feet of habitable living space, where said area does not include public right-of-way. Except as provided by § 155.130, or when authorized through the approval of a conditional use not more than one building, not including accessory buildings, shall be located on a single lot.

155.023 INTENSITY OF USE.

Except as hereinafter provided in § 155.123 every lot or tract of land shall have a minimum width of 60 feet at the building line and an area of not less than 10,000 square feet, and a maximum density of one dwelling unit per 10,000 square feet of area providing a minimum of 1000 square feet of habitable living space, where said area does not include public right-of-way. Except as provided by § 155.130 or when authorized through the approval of a conditional use, not more than one building, not including accessory buildings, shall be located on a single lot.

155.033 INTENSITY OF USE.

Except as hereinafter provided in § 155.123, every lot or tract of land shall have a minimum width of 50 feet at the building line and an area of not less than 6,000 square feet, and a maximum density of one dwelling unit per 6,000 square feet of area providing a minimum of 900 square feet of habitable living space, where said area does not include public right-of-way. Except as provided by § 155.130 or when authorized through the approval of a conditional use, not more than one building not including accessory buildings, shall be located on a single lot.

155.043 INTENSITY OF USE.

(A) Except as hereinafter provided in § 155.123, every lot or tract of land shall have a minimum width of 50 feet at the building line, a minimum area of 5,000 square feet, and a maximum density of one single-family dwelling per 5,000 square feet of area providing a minimum of 900 square feet of habitable living space, where said area does not include public right-of-way. Except as provided by § 155.130 or when authorized through the approval of a conditional use, not more than one building not including accessory buildings shall be located on a single lot.

155.123 ADDITIONAL USE, HEIGHT, AND AREA REGULATIONS AND EXCEPTIONS.

(E) Any lot of record effective June 6, 1961, may be used for any single-family dwelling irrespective of the width or area of the lot provided they meet the minimum square feet requirements for habitable living space; the width of the side yard of any such lot need not exceed 10% of the width of the lot; the depth of the rear yard of any such lot need not exceed 20% of the depth of the lot; provided, that in no instance shall the minimum dimensions of the side and rear yards be less than three feet and ten feet respectively. The maximum coverage of any lot shall not exceed 50 percent.

(H) Unless waived by the Building Official, a maximum of two (2) accessory buildings and structures in residential districts, which are not part of the main building, shall be built in the rear yard and not less than three feet from the rear and side lot lines. An accessory building structure which is not a part of the main building shall not occupy more than 30% of the rear yard and exceed 1,200 square feet. The accessory building structure shall not be larger than the principal structure and the height of the accessory building structure shall not exceed the height of the principle structure.

II. “OB” OFFICE BUSINESS

Add the following text that is underlined and in RED and delete the text that has been stricken in OB OFFICE BUSINESS section 155.060. The list of pacels that are to change are included and will need update on the zoning map.

“OB” OFFICE BUSINESS, "E" AND "E-1" RETAIL BUSINESS DISTRICT REGULATIONS

§ 155.060 USE REGULATIONS.

(A) “OB” Office Business Permitted uses.

- (1) Office buildings and offices: professional, financial, governmental, executive and administrative, and sales offices provided only samples are permitted and no goods shall be directly distributed.**
- (2) General Medical and Special Hospitals and Health Centers.**
- (3) Similar enterprises and establishments of the same general classification, which, in the opinion of the Planning Commission, as evidenced by a resolution of record, are not more intense or obnoxious to the welfare of the neighborhood than the uses listed above.**
- (4) Accessory buildings and uses customarily incidental to any of the above uses.**

(B) “E” and “E-1” Retail permitted uses.

- (1) All permitted uses in the "D" District.**
- (2) Retail and wholesale sales and service of new goods, provided that no more than 1,000 cubic feet of wholesale storage or warehousing is permitted. Included in this permitted category are banks and financial institutions, offices, hotels, places of public assembly, restaurants, bowling alleys, and car washes.**
- (3) Hospitals, nursing homes, and similar facilities for the treatment of the aged or infirm, and institutions of an educational, religious or philanthropic nature.**
- (4) Automotive service stations as defined in § 155.003.**
- (5) Antique shops and thrift shops as defined in this chapter.**
- (6) Child care centers and Type "A" family child care homes as defined in this chapter.**
- (7) Group care home, Category I, defined in this chapter, for up to five residents.**
- (8) Accessory buildings and uses customarily incidental to any of the above uses.**
- (9) Similar enterprises and establishments of the same general classification, which, in the opinion of the Planning Commission, as evidenced by a resolution of record, are not more intense or obnoxious to the welfare of the neighborhood than the uses listed above.**

(C) Conditionally permitted uses in the "E" and "E-1" Retail Business Districts. The following additional uses may be permitted in the "E" and "E-1" Retail Business Districts subject to securing a conditional use permit as required in § 155.126.

- (1) Automotive repair, as defined in this chapter.
- (2) The sale or purchase of used goods.
- (3) Group care homes, Category I, as defined in this chapter, for six to ten or 11 to 15 residents.
- (4) Group care homes, Category II, as defined in this Ordinance, for five or less residents.
- (5) Cellular or wireless communication systems in E-1 Retail Business Districts as described herein:

(a) *Purpose and intent.* Cellular or wireless communication system as restricted in § 155.060(B) may be allowed by conditional use permit in the E-1 Retail Business District where such use is not prohibited or restricted by conditions adopted by ordinance on specific developments. The intent is to allow cellular or wireless communication systems that will minimally impact the surrounding Retail Business District.

(b) *Development standard.* The city shall not accept requests for a conditional use permit for cellular communication systems that do not substantially meet the following development standards.

1. The cellular or wireless communications tower and supporting structure(s) shall preserve the architecture of existing buildings where practical and appropriate.
2. The cellular or wireless communications tower shall be no taller than the maximum height of any building in "E-1" Retail Business District as regulated by § 155.061 plus 15 feet.
3. For reasons of aesthetics and public safety such facilities shall be effectively screened on each side. Screening may consist of a solid masonry wall or a decorative fence, as defined in § 155.121(A)(2) b. 1., six feet in height, with a screen of hardy evergreen shrubbery, or natural or existing screen not less than six feet in height or as approved by the Planning Commission. The use of razor or barbed wire shall be prohibited. Spaces between any screening devices and landscape material shall be maintained in good condition.
4. An application may be disapproved unless the applicant demonstrates that technically suitable and feasible sites are not available in an "F" Light Industrial District.
5. All equipment shall be within a completely enclosed building and there shall be no nuisances caused by the operation of the cellular or wireless communication system.

(D) Prohibited uses. The following uses are prohibited or restricted as described herein.

- (1) Any use prohibited in the "F" Light Industrial Districts;
- (2) Animal hospitals and structures where small animals are boarded if within 200 feet of any residence district;
- (3) Automobile body and fender repairing, except where incidental to an approved automotive repair facility, as defined in this chapter;
- (4) Automobile wrecking or salvage;
- (5) Bakeries employing more than 15 persons on the premises;
- (6) Blacksmith or horse-shoeing shops;
- (7) Bottling works, brewing or distilling of liquors;
- (8) Building materials storage yards;
- (9) Carting, express, hauling, or storage yards;
- (10) Contractor's plant or storage yards;
- (11) Coal, coke, or wood yards;
- (12) Crematories, except in a cemetery;

- (13) Dyeing and cleaning works, employing more than 15 persons on the premises or using a cleaning fluid that has a petroleum base;
- (14) Laundries, employing more than 15 persons on the premises;
- (15) Livery stables or riding academies;
- (16) Lumber yards or planning mills;
- (17) Metal working or welding shops;
- (18) Milk distributing stations, other than retail business conducted on the premises;
- (19) Mobile home parks and mobile homes.
- (20) Stone or monumental works, employing more than five persons on the premises;
- (21) Storage, bailing, or treatment of junk, iron, rags, bottles, or scrap paper;
- (22) Storage warehouses;
- (23) Cellular or wireless communication systems in E Zone District.
- (24) Any kind of manufacture or treatment other than manufacture or treatment of products clearly incidental to the conduct of a retail business conducted on the premises.

(E) All servicing or production shall be inside a completely enclosed building.

(F) *Enclosure.* All storage of goods, material, trash containers and equipment, not including vehicles used off-site, shall be kept inside a building or area screened by a six-foot solid fence or wall. A suitable buffer of dense evergreen landscaping may be substituted for the fence or wall when approved by the Planning Commission.

(Ord. 08-1526, passed 5-20-08)

§ 155.061 HEIGHT REGULATIONS.

No building shall exceed three stories or 45 feet in height, except as hereinafter provided in § 155.123. This height may be exceeded by approval through the Overlay Development Plan provision (§ 155.130).

(Ord. 08-1526, passed 5-20-08)

§ 155.062 AREA REGULATIONS.

(A) *Front yard.* The front yard regulations for "E" Retail Business District are the same as those in the "D" Residence District. In "OB" Office Business and "E-1" Retail Business District, no front yard shall be required.

(B) *Side yard.* The side yard regulations for dwellings in the "E" and "E-1" Retail Business Districts are the same as those in the "D" Residence Districts. In all other cases a side yard is not required except on the side of a lot adjoining residence districts, in which case there shall be a side yard of not less than five feet.

(C) *Rear yard.* The rear yard regulations for dwellings in the "E" and "E-1" Retail Business Districts are the same as in the "D" Residence Districts. In all other cases, a rear yard is not required except where a lot abuts upon "B", "C", or "D" Residence Districts, in which case there shall be a rear yard of not less than 15 feet.

(Ord. 08-1526, passed 5-20-08)

§ 155.063 INTENSITY OF USE.

The intensity of use regulations are the same as those in the "D" Residence Districts.

(Ord. 08-1526, passed 5-20-08)

§ 155.064 DEVELOPMENT PLAN.

Developments involving more than one lot of record as of the effective date of Ordinance 08-1526, or more than one building on the same development site shall require approval of a development plan. The development plan shall be approved by the Planning Commission. The plan shall include detailed specifications on building location, circulation and parking, lighting, storm water drainage and detention, sediment control, public utilities, and other such information as required to conduct a plan

review. The Planning Commission may make reasonable additional requirements as to landscaping, lighting, signing, screening, access ways, and building setbacks to protect adjacent property.
(Ord. 08-1526, passed 5-20-08)

"EE" PLANNED BUSINESS DISTRICT REGULATIONS

§ 155.070 USE REGULATIONS.

Any use permitted in the "E" Retail Business District with the exception of cell towers, may be permitted in the "EE" Planned Business District provided the District shall be laid out and developed as a unit according to an approved development plan as defined in § 155.003 in order to provide for business and retail shopping facilities properly integrated with the surrounding area and at appropriate locations for service.

(Ord. 08-1526, passed 5-20-08)

§ 155.071 PROCEDURE.

The owner or owners of a tract of land may submit a plan for the use and development of such tract for the purposes of and meeting the requirement set forth in this section. The development plan shall show the details defined in § 155.003 in order to indicate the type and character of the proposed development and the treatment of the tract, including screening and landscaping, in relation to abutting land uses for a harmonious relationship with the surrounding property and the protection thereof.

(Ord. 08-1526, passed 5-20-08)

§ 155.072 HEIGHT AND AREA REQUIREMENTS.

(A) No building shall exceed three stories or 45 feet in height.

(B) No building shall be closer than 35 feet to any other boundary line of the tract that abuts any more restricted district.

(C) The aggregate ground area occupied by all buildings shall not exceed 25% of the entire area of tract.

(D) In a case where the topography or other physical features of the tract or its relation to surrounding property may make complete compliance with the yard requirements as prescribed in this section unnecessary or undesirable, the City Planning Commission may modify such requirements to the extent warranted by such physical conditions, provided the surrounding property and the public welfare are adequately protected.

(Ord. 08-1526, passed 5-20-08)

§ 155.073 PARKING AND LOADING REQUIREMENTS.

Off-street parking and loading spaces shall be provided as required by § 155.120.

(Ord. 08-1526, passed 5-20-08)

§ 155.074 GENERAL REQUIREMENTS.

(A) The size and location of the tract in relation to surrounding property shall be such that the proposed development, including landscaping and screening and other adjustments to the abutting land uses, can be made to harmonize with the neighborhood. The proposed plan shall not be approved unless the City Planning Commission specifically makes a finding that the development will be harmoniously related to the overall neighborhood.

(B) Adequate provision shall be made for traffic circulation into and out of the development, in addition to the provision for through traffic movements on the access street or streets. To this end, the means of location of all ingress and egress and the provisions for traffic movement and circulation, including additional traffic lanes where needed, shall be subjected to approval of the City Engineer. The installation of additional lanes for deceleration or turning movements may be required, and traffic controls, as needed, may be imposed to provide for safe and efficient traffic circulation by and within the development.

(C) Service drives or other areas shall be provided for off-street loading, in such a way that trucks will not block the passage of other vehicles or impede circulation on any other public or private drive or street.

(D) All drives, parking areas, loading areas, and walks shall be paved with hard surface material meeting the approval of the City Engineer.

(E) The location and arrangement of buildings, parking areas, walks, access ways, and lighting, appurtenant facilities shall be adjusted to the surrounding land uses. Any part of the area not used for building or other structures or for parking, loading, or access ways shall be landscaped with grass, trees, and shrubs, or pedestrian's walks.

(F) All mechanical equipment for heating, cooling, air conditioning, or similar purposes which may create either noise or fumes, if not within the main building, shall be located at least 100 feet from all property lines within or adjacent to a residence district.

(G) Reasonable additional requirements as to landscaping, lighting, signing, screening, access-ways and building setbacks may be imposed by the City Planning Commission for the protection of adjacent property.

(Ord. 08-1526, passed 5-20-08)

§ 155.075 DELAY IN CONSTRUCTION.

In the event that construction of the development in accordance with the approved plan is not begun within one year after the date of approval by the Council becomes effective, the plan shall no longer be valid, and no permit shall be issued for construction unless and until a new plan is submitted and approved by the City Planning Commission and Council in the same manner as the previous plan. However, on recommendation of the City Planning Commission, the Council may extend the period of approval of the approved plan for one additional year without the submission of a new plan. In the event that construction is not begun as prescribed in this section, the application of the "EE" Planned Business District to the property shall be void, and the zoning classification thereof shall revert to the district in which it was classified before the approved plan.

(Ord. 08-1526, passed 5-20-08)

§ 155.076 VIOLATION OF PLAN.

The development plan approved in accordance with this section and § 155.058 shall be an integral part of the zoning code and any departure from this plan or any modification thereof, except when specifically approved in accordance with § 155.058, shall be a violation of the zoning code and shall be subject to the provisions and penalties prescribed therefore in § 155.999.

(Ord. 08-1526, passed 5-20-08)

SUMMARY OF ZONING DISTRICT REGULATIONS

District	Primary Use	Height Story/ft.	Front Yard	Side Yard	Rear Yard	Lot Width	Min. Area	Density
A	Residential Single Family	2.5/35	50	15	35	80	20,000	1-Dwelling Unit/ 20,000
B	Residential One or Two Family	2.5/35	35	8	30	60	10,000	1-Dwelling Unit/ 10,000
C	Residential One or Two Family	2.5/35	30	5	30	50	6,000	1-Dwelling Unit/ 6,000
D	Residential Multi-Family	3/35	30	*	*	50	4,000*	1-Dwelling Unit/ 4,000
OB E E-1	Business	3/45	E - 30 E1 - 0	*	*	50	5,000*	*
DD	Planned Multi-Family	3/45	30	*	*	*	2Ac.	1-Dwelling Unit/ 4,000*
EE	Planned Business	3/45	*	*	*	*	*	25% of Tract Area

* See Text

The "OPD" Overlay Planned Development can be used as an overlay regulation in one zone or combining zoning districts (see § 155.130).

(Ord. 08-1526, passed 5-20-08)

“CBD” CORE BUSINESS DISTRICT

§ 155.077 PURPOSE AND INTENT.

(A) Consistent with the Mt. Healthy Comprehensive Plan, a central business district of approximately 28 acres is created to differentiate the city center from the surrounding business, residential and other districts. Increased density, shared and/or municipal parking, reduced setbacks, encouragement of direct pedestrian street front access to shops, offices and services, and a limit on or a prohibition on undesirable uses specific only to the “CBD” district are herewith implemented as zoning tools to encourage development of the city center.

(Ord. 14-1709, passed 8-5-14)

§ 155.078 USE REGULATIONS.

(A) *Permitted uses.*

(1) All permitted uses in the “E” and “E-1” Retail Business District unless prohibited in division (B) below.

(2) Dwellings located on second floor and above.

(B) *Prohibited uses.*

(1) All prohibited uses in the “E” and “E-1” Retail Business District.

(2) Drive-thru restaurants.

(3) Day care centers.

(4) Car washes.

(5) Nursing homes and similar facilities for the treatment of the aged or infirm.

(6) Group care homes any category as defined in this chapter.

(7) The sale of used goods, notwithstanding permitted sales of antiques as defined in § 155.003 “Antique Store.”

(8) Thrift shops as defined in § 155.003 “Thrift Shop.”

(9) Automotive rental, sales, service and repair as defined in § 155.003 “Automotive Repair” and “Automotive Service Station.

(10) Sales and storage in open yards, notwithstanding permitted display of items sold at retail within a retail establishment as follows:

(a) The display of items which are sold at retail within a retail establishment may take place on the sidewalk outside the business as long as the items displayed are sold at retail within the business, the display occurs only within the area encompassing the width of the building, the items are removed outside business hours, and the display utilizes an area that still allows a minimum of six feet unimpeded width for pedestrian traffic.

(11) Other uses deemed by Planning Commission as inappropriate in the “CBD” Core Business District.

(C) *Conditionally permitted uses.*

(1) Taverns and night clubs.

(2) Outside dining, consumption of food and beverage.

(3) Churches and other similar places of religious assembly.

(D) Notwithstanding permitted display of items sold at retail, outside dining, consumption of food and beverage, and other activities approved by Planning Commission, all permitted uses shall be conducted wholly within enclosed buildings.

(E) Trash containers and dumpsters shall be screened from public view by an enclosure consisting of six-foot solid fence or wall. A suitable buffer of dense evergreen landscaping may be substituted for the fence or wall when approved by Planning Commission.

(Ord. 14-1709, passed 8-5-14)

§ 155.079 AREA, YARD AND HEIGHT REGULATIONS.

(A) *Front yard.* No front yard setback from street right-of-way shall be required along Hamilton Avenue. Front yard setback in the District along Harrison and Perry shall be no less than the required front yard setback of any adjacent district. Setback for parking along Harrison and Perry may be reduced to five feet with at least 50% of the setback area landscaped unless otherwise approved by Planning Commission.

(B) *Maximum front yard.* New structures with frontage on Hamilton Avenue must be no further than ten feet from street right-of-way, which may be extended by an additional ten feet for up to 30% of the facade length as long as the additional front yard depth is used for outdoor dining, pedestrian walkways, or a formally landscaped plaza. Planning Commission may grant relief of maximum front yard requirements for expansion of existing buildings or parking.

(C) *Side yard.* No side yard setback required unless adjoining a Residence District, in which case there shall be a side yard on not less than five feet. Cross-access of adjoining parking areas is encouraged.

(D) *Side yard on corner lot.* Side yards on corner lots shall be consistent with minimum and maximum front yard setbacks. Parking setback for side yard on corner lot (side street) as allowed in the rear yard shall have a setback of five feet from street right-of-way and at least 50% of the setback area shall be landscaped unless otherwise approved by Planning Commission.

(E) *Rear yard.* The intent of the “CBD” District is to encourage rear yard parking. The intent is also to allow flexibility. No rear yard setback for any use in the district is required.

(F) *Height.* No building shall exceed four stories or 45 feet in height unless otherwise approved by the Planning Commission.

- (G) *Coverage.* The aggregate ground area occupied by all buildings shall not exceed 50% unless otherwise approved by Planning Commission.
- (H) Off-street parking and loading spaces shall be provided as required by § 155.120.
(Ord. 14-1709, passed 8-5-14)



Parcels to be changed to “OB” Business District:

<u>Parcel number</u>	<u>Description</u>
593-0002-0004-00	8000 Hamilton Ave
593-0007-0225-00	7272 Hamilton Ave
593-0008-0552-00	1411 Compton Rd
593-0010-0003-90	1310 Adams Rd

III. BOARD OF ZONING APPEALS (BZA)

Add the following text that is underlined and in RED and delete the text that has been ~~stricken~~ in BOARD OF ZONING APPEALS (BZA) section 155.124.

155.124 BOARD OF ZONING APPEALS.

(A) *Intent.* A Board of Zoning Appeals is hereby established to assist in the administration of this zoning ordinance, and in particular, to decide and interpret provisions which require impartial adjustments of conflicting interests and to grant variances from the strict letter of this ~~chapter code~~ in instances of unnecessary hardship. The Board is herein established to achieve, among others, the following purposes:

(1) To provide a method for alleviating unnecessary hardship by allowing a reasonable use for individual parcels of property which, because of unusual or unique circumstances, may be denied a reasonable use by literal application of the terms of this ~~chapter code~~;

(2) To review or appeal any order, requirements, decision or determination made by a city administrative official regarding this ~~chapter code~~;

(3) To ensure that decisions and the granting of variances shall sustain the constitutionality of this ~~chapter code~~.

(B) *Membership.*

(1) Provisions regarding the Board of Zoning Appeals are contained in City Charter § 6.04.

(2) Members of the Board shall be removable for nonperformance of duty, misconduct in office or other cause, by the Mayor, upon written charges having been filed with the Mayor and after a public ~~hearing meeting~~ hearing has been held regarding such charges. A copy of the charges shall be served upon the member at least ten days prior to the public hearings meeting, either personally, by registered mail or by leaving the same at his or her usual place of residence. The member shall be given opportunity to be heard and answer such charges. Vacancies shall be filled by the Mayor and shall be for the unexpired term.

(C) *Officers and duties; general powers.* The Board of Zoning Appeals shall elect from among its members, a Chairman and a Vice Chairman. The Board shall adopt rules and regulations not inconsistent with this zoning ordinance, as may be necessary to carry into effect the duties, powers and responsibilities conferred herein. The powers, duties and responsibilities of the Board shall be:

(1) To hear appeals and decide any issues involving the application of impartial considerations and judgments in regard to decisions made by any administrative officer on matters relating to this ~~chapter code~~, for relief from any order, requirement, decision or determination, including the refusal, granting or revocation of permits;

(2) To hear and decide all matters specifically referred to it for decisions in other sections of this ~~chapter code~~.

(D) *Stay of proceedings.* An appeal of an administrative decision shall stay all proceedings in furtherance of the action appealed from, unless the Building Official certifies to the Board after the notice of appeal has been filed with him or her that, by reasons of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order granted by the Board, or by a court of record, on application or notice to the Building Official on due cause shown.

(E) *Public Meetings and hearings.*

(1) The Board shall hear and decide appeals de novo and shall review on appeal any order, requirement, decision or determination made by a Building Official in the enforcement or application of this zoning ordinance. Within its powers, the Board may reverse or affirm, wholly or in part, or modify any such order, requirement, decision or determination as, in its opinion, ought to be made under the circumstances and to that end it shall have all the powers of the officer from whose decision the appeal is taken.

(2) All public hearings meetings conducted by the Board shall be open to the public and the scheduled meeting dates and reason for the meeting will be posted on the City website. Any person may appear and testify at a public hearing meeting, either in person or by duly authorized agent. The Board shall have the power to subpoena and require the attendance of witnesses, to administer oaths, to compel testimony and to produce reports, findings and other evidence pertinent to any issues referred to it for decision.

(F) *Procedure on appeal.*

(1) *Commercial.* Appeals to the Board of Zoning Appeals may be taken by any person or legal entity aggrieved. Such appeals shall be taken within 60 days after administrative decision by filing with the Board a notice of appeal specifying the grounds thereof. A filing fee shall accompany the notice of appeal. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. The Board shall fix a reasonable time for the public hearing-meeting of the appeal, the hearing meeting shall be held within 60 days of the filing of the appeal, unless extended by agreement of the parties. Notice by first class mail shall be sent to the parties in interest at least not less than 15 days before the meeting date. ~~Notification requirements of the public open meeting law shall be met.~~ Upon the public hearing meeting, any party may appear in person or by representative. The Board shall act within 30 days from the date of the final public hearing meeting or extensions thereof, unless an extension of time is mutually agreed upon.

(2) *Residential.* Appeals to the Board of Zoning Appeals may be taken by any person aggrieved. Such appeals shall be taken within 30 days after the decision by filing with the officer from whom the appeal is taken and with the Board a variance petition specifying the grounds thereof. A filing fee ~~of \$35~~ as established by council shall accompany the variance petition for all residential appeals. The officer from whom the appeal is taken shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. The Board shall fix a reasonable time for the public hearing- meeting of the appeal, hearing meeting shall be held within 60 days of the filing of the appeal, unless extended by mutual agreement of the parties in interest, unless waived, and decided the same within reasonable time after it has been submitted. Upon the public hearing meeting, any party may appear in person or by attorney.

(G) *Quorum and vote.*

(1) Three members shall constitute a quorum for action by the Board of Zoning Appeals. The Board shall act by resolution, in which a majority concur and every variation granted or denied, shall be presented, and specifying the reason for granting or denying the variation.

(2) A member of the Board shall not be qualified to vote if he or she has not attended the public hearing meeting, or if he or she has a direct or indirect interest in the issue appealed.

(H) *Record of decisions.* The Board of Zoning Appeals is authorized to engage the services of a secretary, and shall provide a detailed report of all its proceedings, setting forth its reason for decisions, or his or her failure to vote. Immediately following the Board's decision, such record including conditions prescribed by the Board shall be filed and posted for two weeks in the offices of the City

Manager. The report shall be open to public inspection and copies shall be mailed forthwith to each interested party noted therein.

(I) *Notice to Council, Planning Commission and Building Officials.* Upon issuance by the Board of Zoning Appeals of any ruling, determination or order, the Secretary of the Board shall send within three days of the date of such ruling, determination or order, a copy thereof to the Clerk of Council and to the Secretary of the Planning Commission who shall present such report at the next regular meeting. A copy of such ruling shall be sent to the Building Official for his or her files and verification before any permit can be issued.

(J) *Appeals to courts.* A person aggrieved by a decision of the Board of Zoning Appeals may appeal to the Court of Common Pleas of Hamilton County within 60 days of the decision. Such appeals may be either on questions of law, on questions of fact, or on questions of law and fact.

(Ord. 08-1526, passed 5-20-08)

§ 155.125 VARIANCES.

(A) *Definition and intent.* A variance is a relaxation of the terms of the zoning code where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property, a literal enforcement of the code would result in unnecessary and undue hardship.

(B) *Required approval.* Variances shall require approval of Board of Zoning Appeals and shall be subject to requirements and standards specified in this code. In order to preserve the character of the neighborhood and to otherwise promote and effectuate the purposes of this zoning ordinance, additional restrictions may be deemed necessary and may be imposed by the Board of Appeals incident to the approval of an application.

(C) *Reasons for granting variances.* The Board of Zoning Appeals may authorize a variance from strict application of these regulations, by reasons of exceptional lot narrowness, shallowness, shape topographic conditions or other extraordinary situations in order to relieve undue hardship. The variance shall not substantially impair the public good nor the intent of these regulations. No variance shall be granted unless the Board finds that all of the following conditions exist:

(1) The granting of the variance shall be necessary to relieve hardship and preserve the applicant's right to the reasonable and legitimate use of his or her property; the request shall not be granted merely for the convenience of the applicant.

(2) The requested variance shall not constitute a change in land use resulting in the establishment of a use not normally permitted in the applicable zoning district.

(3) The special circumstances or conditions applying to the building or land in question, which may include the historic nature of the building or land, are peculiar to such lot or property, and do not generally, apply to other land or buildings in the vicinity.

(4) The special conditions or circumstances which form a basis for the variance application shall not result from the actions of the applicant.

(5) Nonconforming use of neighboring lands, structures or buildings in the same zoning district, and permitted or nonconforming use of lands, structures or buildings in other zoning districts shall not be considered grounds for the issuance of a variance.

(6) The application for a variance shall not be based exclusively upon a desire to increase the value or income potential of the parcel of land or any structures or uses thereupon.

(D) *Application procedures and requirements for variances.* When applying for a variance, the applicant shall state and substantiate his or her claim that the conditions listed above in division (C) exist, and shall submit such statement with his or her application to the Board of Zoning Appeals.

(1) An application for a variance shall be made by the property owner, or authorized agent thereof, or by the City Council or Planning Commission, acting on their own motion, on a form provided for such purposes, and shall be accompanied by the following:

- (a) A site plan and other drawings to scale, showing existing and proposed use of the site, all pertinent natural and man-made features, and adjacent land use and buildings.
- (b) A list of names and mailing addresses of all owners of property within 300 feet of any part of the property in question. The city may expand the notification area if it deems necessary.
- (c) A letter requesting a variance and providing the following:
 - 1. A statement of need for the proposed variance, its location and magnitude;
 - 2. A summary report identifying and evaluating the consequences and effects of the proposed variance on the surrounding properties and neighborhood at large;
 - 3. A statement indicating how the negative effects, if any, of the proposed variance will be mitigated.
- (d) A legal description of the property, signed by a registered engineer or surveyor.
- (e) An application fee and multiple copies of the proposed site plan as required by the Building Official.

(E) *Approval of Board of Zoning Appeals.*

(1) *Non-residential or more than three family residential.* Variance petitions to the Board of Zoning Appeals may be taken by any person or legal entity aggrieved. Such variance requests shall be taken within 60 days after administrative decision by filing with the Board a variance petition specifying the grounds thereof and all other submissions as detailed in the section. A filing fee shall accompany the variance petition. The officer from whom the variance is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action variance from was taken. The Board shall fix a reasonable time for the public hearing meeting of the variance, the hearing meeting shall be held within 60 days of the filing of the variance petition, unless extended by agreement of the parties. Notice of the meeting by first class mail will be mailed to adjoining or otherwise impacted property owners not less than 15 days prior to the meeting or as directed by the Board. ~~Notice by first class mail shall be sent to the parties in interest as described in division (E)(2)(a) below. Notification requirements of the public open meeting law shall be outlined in division (E)(2)(b) below.~~ Upon the public hearing meeting, any party may appear in person or by representative. The Board shall act within 30 days from the date of the final public hearing meeting or extensions thereof, unless an extension of time is mutually agreed upon. ~~A notice surcharge will be charged to the applicant for costs incurred as a result of notification expenses. This fee must be paid before the hearing occurs.~~

(2) *Residential less than four family.* Any person aggrieved may take a variance petition to the Board of Zoning Appeals. Such variance petitions shall be taken within 30 days after the decision by filing with the officer from whom the variance is taken and with the Board a variance petition specifying the grounds thereof. A filing fee shall accompany the variance petition for all residential variance petitions. The officer from whom the petition is taken shall forthwith transmit to the Board all papers constituting the record upon which the action from was taken. The Board shall fix a reasonable time for the public hearing meeting of the variance, the hearing meeting shall be held within 60 days of the filing of the appeal, unless extended by mutual agreement of the parties in interest, unless waived, and decided the same within reasonable time after it has been submitted. Notice of the public hearing meeting by first class mail will be mailed to adjoining or otherwise impacted property owners within not less than 15 days prior of to the public hearing meeting or as directed by the Board. Upon the public hearing meeting, any party may appear in person or by attorney.

~~— (a) A notice of the hearing shall be mailed by first class mail to all property owners within 300 feet of any part of the property in question. Owners of property not within city limits but within 300 feet of the property in question also shall be notified. Notice shall be sent to the addresses of owners as they appear on the County Auditor's current tax list or the Finance Director's mailing list. The notice shall specify the date, place and time of the hearing, and shall contain a statement as to the nature and location of the proposed variance. Such notification shall be mailed no less than 20 days before the hearing.~~

~~— (b) The notification of the hearing shall also be made by means of publication in a newspaper of general circulation in the city, adequately describing the nature of the proposed variance, once a week for two consecutive weeks, the first of such publications to take place not less than 30 days prior to the public hearing.~~

(3) Within 30 days following the public hearing meeting, the Board of Zoning Appeals shall make a written report to approve or deny the request, citing, as applicable, the reason(s) for approval or denial as they relate to the six conditions described in division (C) above. The Board may approve the variance with such additional requirements and conditions with regard to construction, maintenance and operation as it deems necessary to protect adjacent uses and the public interest.

(F) *Period of validity of a variance.* In any case where an approved variance has not been used within one year of the date on which it was granted, such variance shall expire unless an extension of the above time period for a maximum of one additional year has been authorized by the Board of Zoning Appeals.

(G) *Expansion and/or conversion.* Approved variances shall be considered conforming uses or buildings, as applicable. Such buildings may be expanded or rebuilt or redesigned without a public hearing meeting provided that no additional property is acquired to accommodate the expansion and that such expansion, rebuilding or design conforms to other pertinent provisions of this chapter and the terms of the variance.

(H) *Previous application.* An application for a variance on property for which all or any part has been previously denied, or an application which was withdrawn subsequent to a public hearing meeting, within the four-month period first preceding the date of the meeting for which the proposed application would be scheduled, for the same, similar, or a more intensive use or setback, shall not be accepted. In addition, a period of eight months from the date of a second denial must elapse before an application may be filed for the same, similar, or a more intensive use or setback. Any application for a variance for which there has been previously filed an application for a conditional use permit or a reclassification for the same, similar, or a more intensive use or setback, where such application has been denied or withdrawn subsequent to a public hearing meeting, shall not be accepted until the above time limits have elapsed.

(Ord. 08-1526, passed 5-20-08)

IV. CONDITIONAL USE

Add the following text that is underlined and in RED and delete the text that has been ~~stricken~~ in Conditional Use section 155.126.

§ 155.126 ~~CONDITIONALLY USE PERMITTED USES.~~

(A) *Definition and intent.* Conditionally Use permitted uses are those uses described or referred to herein which have a particular impact on the surrounding area that cannot be predetermined and controlled by general regulations. In order to ensure that these uses in their proposed location

will be compatible with surrounding development, their establishment shall not be a matter of right, but may be permitted after review and approval as hereinafter provided.

(B) *Required approval.* Conditionally ~~Use permitted~~ uses shall require approval of Council and shall be subject to the requirements and standards specified in this chapter. In order to preserve the character of the neighborhood and to otherwise promote and effectuate the purposes of this zoning ordinance, additional restrictions may be deemed necessary and may be imposed by Council incident to the approval of an application.

(C) *Application procedures and requirements for conditional use permits.* ~~The Planning Commission shall make recommendations thereon to Council.~~

(1) An application for a conditional use permit shall be made by the property owner, or authorized agent thereof, or by the City Council or Planning Commission, acting on their own motion, submitted through the Building Official to the Planning Commission on a form provided for such purposes, and shall be accompanied by the following:

(a) A site plan and other drawings to scale, showing existing and proposed use of the site, all pertinent natural and man-made features, and adjacent land use and buildings;

(b) A list of names and mailing addresses of all the owners of property within 300 feet of any part of the property in question. The city may expand the notification area if it deems necessary;

(c) A letter requesting a conditional use permit and providing the following:

1. A statement of need for the proposed conditional use permit, its location and magnitude;

2. A summary report identifying and evaluating the consequences and effects of the proposed conditional use permit on the surrounding properties and the neighborhood at large;

3. A statement indicating how the negative effects of the proposed use will be mitigated;

(d) A legal description may be required of the property, signed by a registered engineer or surveyor;

(e) An application fee and multiple copies of the ~~proposed site plan~~ as required by the Building Official.

(2) *Approval by Planning Commission Review.* ~~The Planning Commission shall conduct a public meeting with notification by first class mail as required for a notice of a request for conditional use approval not less than 15 days prior to the public meeting. The city will also post notice on the City website with the reason for the meeting. within 60 days after the submission of all material for the application for a conditional use permit. After submittal, the application shall remain available for public inspection. Notification of the public hearing shall be by the following means:~~

~~— (a) A notice of the hearing shall be mailed by first class mail to all property owners within 300 feet of any part of the property in question. Owners of property not within city limits but within 300 feet of the property in question also shall be notified. Notice shall be sent to the addresses of owners as they appear on the County Auditor's current tax list or the Finance Director's mailing list. The notice shall specify the date, place and time of the hearing, and shall contain a statement as to the nature and location of the proposed use. Such notification shall be mailed no less than 20 days before the hearing.~~

~~— (b) The notification of the hearing shall also be made by means of publication in a newspaper of general circulation in the city, adequately describing the nature of the proposed conditional use, once a week for two consecutive weeks on the same day of the week, the first of such publications to take place not less than 30 days prior to the public hearing.~~

~~— (a) Following the public meeting, during its regular business meeting, the Planning Commission shall decide to recommend approval, approval with conditions or deny the application and submit a~~

~~report of its recommendations to Council~~ denial to the Council, and within 30 days after the public hearing shall provide such decision to the Council, along with a written recommendation on each of the following:

1. The location of the conditional use and its suitability, in terms of its natural features, for the proposed use;

2. A finding on whether the proposed use will have a negative effect on or will conflict with surrounding areas.

3. The effect of the requested use on the health, safety, and general welfare of the residents of the area in the vicinity of the property in question and the residents of the City generally.

~~To this end, the Planning Commission may recommend such additional requirements and conditions with regard to construction, maintenance and operation as it deems necessary to protect adjacent uses and the public interest.~~

(3) *Council approval.*

(a) Within 45 days following the receipt of the written recommendation by the Planning Commission, Council shall conduct its public meeting for the conditional use permit. Notification of the public meeting shall be by the same means as described in divisions (C)(2)(a) and ~~(C)(2)(b)~~ above.

(b) Within 30 days following the Council's public meeting, Council shall approve, approve with conditions or disapprove the application for a conditional use permit. No conditional use permit which violates, differs from, or departs from the plan or report submitted by the Planning Commission shall take effect unless passed or approved by not less than three-fourths of the membership of the Council. No conditional use permit which is in accordance with the recommendation, plan, or report submitted by the Planning Commission shall be deemed to pass or take effect without the concurrence of at least a majority of the members elected to the Council.

(D) *Conditional use permit.* Following Council's approval, a conditional use permit shall be issued to the applicant by the Building Official. The permit shall contain all conditions approved by Council.

(E) *Period of validity of conditional use permit.*

(1) In any case where an approved conditional use permit has not been used within one year of the date on which it was granted, that permit shall expire unless an extension of the above time period has been authorized by the Building Official Planning Commission.

(2) A conditional use permit shall be void without further action if the use approved by the conditional use permit ceases for a period of one continuous year.

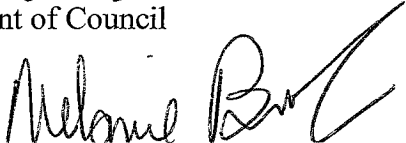
~~(3) Approval by the Planning Commission. The Planning Commission shall conduct a hearing within 30 days after the submission of all material for the application for a special conditional use permit. Following the hearing, during its regular business meeting, the Planning Commission shall decide to approve or deny the applicant's request. If the applicant has met all of the criteria set out in division (C)(1) above, then the application shall be approved. If the applicant is unable to meet all of the criteria set out in division (C)(1) above, then the Planning Commission shall approve or deny the application based upon the Planning Commission's determination of whether or not the proposed use would have a negative effect on, or will conflict with the surrounding areas. The Planning Commission shall notify applicant of the decision within 30 days after the decision is made.~~

(3) If the conditional use permit is denied, the owner or the owner's authorized agent has the option to appeal the decision to the Board of Zoning Appeals subject to the requirements set forth in § 155.124: Appeals. The determination by the Board of Zoning Appeals constitutes a final decision by the city.

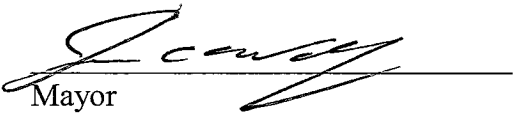
Section 2. That this Ordinance shall be in full force effect from and after the first date provide by law.

Passed this 7 day of November, 2017.


President of Council

Attest: 
Clerk of Council

Approved this 7 day of November, 2017.


Mayor