

# VILLAGE OF DENNISON, OHIO

## ZONING CODE

ORDINANCE NO. 2052

ADOPTED BY VILLAGE COUNCIL SEPTEMBER 3, 1998

### ARTICLE XVI BOARD OF ZONING APPEALS

#### **1600 Organization and Procedures**

1600.1 Appointment: There is hereby established a Board of Zoning Appeals which shall consist of five (5) electors of the Village of Dennison and shall be appointed by the Mayor. The Mayor shall choose a successor to fill any vacancy. The five (5) electors first appointed shall serve for terms as follows: one (1); two (2); three (3); four (4); and five (5) years respectively. Thereafter appointments made shall be for five (5) year terms, beginning January 1st. Each member shall serve until his/her successor is appointed and qualified. Vacancies shall be filled by the Mayor and shall be for the respective unexpired term. The members of the Board of Zoning Appeals may receive such compensation as the Council provides.

1600.2 Hearings, Rules, etc.: The hearings of the Board of Zoning Appeals shall be public. However, the Board may go into executive session for discussion but not for vote on any case before it. The Board shall organize annually and elect a Chairman and Secretary. The Board shall adopt from time to time such rules and regulations as it may deem necessary to carry out the provisions of this Ordinance. Meetings shall be held at the call of the Chairman and at such other times as the Board shall determine.

The Board shall hear any owner of property adjacent to the lot for which the granting of any Zoning Certificate is pending and shall also hear any other parties having substantial interest as determined by the Board.

1600.3 Minutes and Records: 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 Village Clerk, and shall be a public record.

1600.4 Witnesses, Oaths, etc.: The Board shall have the power to subpoena witnesses, administer oaths, and punish for contempt, and require the production of documents under such regulations as it may establish.

1600.5 Department Assistance: The Board may call upon the various officials and employees of Village for assistance in the performance of its duties, and it shall be the duty of such departments to render such assistance to the Board as may be reasonably required.

#### **1601 Applications and Appeals**

1601.1 Applications: An application, in cases in which the Board has original jurisdiction under the provisions of this Ordinance, may be taken by any person aggrieved, including a tenant, or by a governmental officer, department, board or bureau. Such application shall be filed with the Zoning

Inspector who shall transmit same to the Board. A deposit in the amount of twenty-five dollars (\$25.00) for the purpose of defraying the costs of the proceedings described herein shall be deposited with the Zoning Inspector at the time the notice of appeal is filed.

#### 1601.2 Appeals:

(a) An appeal to the Board may be taken by any person aggrieved or by any officer of the Village of Dennison affected by any decision of the Zoning Inspector. Such appeal shall be taken within twenty (20) days after the decision, by filing with the Zoning Inspector and with the Board a Notice of Appeal specifying the grounds thereof. The Zoning Inspector shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(b) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Inspector shall certify to the Board of Zoning Appeals after the Notice of Appeal shall have been filed with it that by reason of facts stated in the Certificate, a stay would, in his opinion, cause imminent peril to life or property. In such a case proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Appeals or by a court of record on application after notice to the officer from whom the appeal is taken and on due cause shown.

(c) The Board may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all powers of the Zoning Inspector from whom the appeal is taken.

#### **1602 Hearings**

1602.1 The Board shall fix a reasonable time for the hearing of an appeal, give at least ten (10) days public notice thereof in a newspaper of general circulation in the community and at least ten (10) days notice to parties having a proprietary interest in land within two hundred (200) feet and decide upon the appeal within a reasonable time after it is submitted. At the hearing any party may appear in person or be represented by an attorney. The party seeking the hearing must be appear in person or be represented by an attorney.

1602.2 The hearings of the Board shall be conducted in public. The Board may go into executive session to discuss matters before but shall not vote on any case in such executive session. All voting shall be conducted in the open, public hearing and each vote cast shall be recorded into the minutes of the hearing.

1602.3 Upon the day for hearing any application or appeal, the Board may adjourn the hearing in order to permit the obtaining of additional information or to cause such further notice as it deems proper to be served upon such other property owners as it decides may be substantially interested in said application or appeal. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the time of resumption of said hearing unless the Board so decides.

#### **1603 Decision of the Board**

1603.1 The Board shall decide all applications and appeals within thirty (30) days after the final hearing thereon.

1603.2 A certified copy of the Board's decision shall be transmitted to all parties in interest. Such decision shall be binding upon the Zoning Inspector and observed by him/her, and he/she shall incorporate the terms and conditions of the same in the Certificate to the applicant or appellant, whenever a Certificate is authorized by the Board.

1603.3 A decision of the board shall not become final until the expiration of five (5) days from the date such decision is made, unless the Board shall find the immediate taking effect of such decision is necessary for the preservation of property or personal rights and shall certify on the record.

1603.4 The Board may reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and shall make such order, requirement, decision, or determination as in its opinion ought to be made in the premises and to that end shall have all powers of the Zoning Inspector from which the appeal is taken. Any party adversely effected by a decision of the Board may appeal to the Court of Common Pleas of Tuscarawas County on the ground that the decision was unreasonable or unlawful..

#### **1604 Powers and Duties**

The Board of Zoning Appeals shall have the following powers and duties:

1604.1 To hear and decide appeals where t is alleged there is an error in order, requirement, decision or determination made by the Zoning Inspector in the enforcement of this Ordinance or any amendments thereto.

1604.2 In hearing and deciding appeals, the Board shall have the power to grant an exception in the following instances:

- (a) Permit the extension of a District where the boundary line of a district divides a lot or tract held in single ownership at the time of the passage of this Ordinance.
- (b) Interpret provision of this Ordinance in such a way as to carry out the intent and purpose of the plan, as shown upon the map fixing the several districts, accompanying and made a part of this Ordinance where the street layout on the ground varies from the street layout as shown on the map aforesaid.
- (c) Permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God, or the public enemy to the extent of more than sixty (60) percent of its fair market value where the Board finds some compelling necessity requiring a continuance of the nonconforming use and the primary purpose of continuing the nonconforming use is not to continue a monopoly.
- (d) Permit the modification of the automobile parking space or loading requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit (1) the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building; or (2) the dual use of parking facilities (for example by stores during the day and theaters during the evening) provided there is no overlapping of use and the parking space requirements for each building or use are complied with during each period.

- (e) Determine whether an industry should be permitted within the M-1 Light Manufacturing Business District because of the methods by which it would be operated and because of its effect upon uses within surrounding zoning districts.
- (f) The substitution of a nonconforming use existing at the time of enactment of this Ordinance of another nonconforming use if no structural alterations except those required by law or ordinance are made, provided, however that in an "R" District no change shall be authorized by the Board to any use which is not a permitted, conditional or accessory use.
- (g) Temporary Structures and Uses: The temporary use of a structure or premises in any district for a purpose or use that does not conform to the regulations prescribed elsewhere in this Ordinance for the district in which it is located, provided that such use be of a temporary nature and does not involve the erection of a substantial structure. A Zoning Certificate for such use shall be granted in the form of a temporary and revocable permit for not more than a twelve (12) month period, subject to such conditions as will safeguard the public health, safety, convenience and general welfare.

### **1605 Variances**

1605.1 The Board shall have the power to hear and decide appeals and authorize such variances from the provisions or requirements of this Ordinance as will not be contrary to the public interest. In authorizing a variance, the Board may attach conditions and require such guarantee or bond as it may deem necessary to assure compliance with the objectives of this Ordinance. On appeal where there is unnecessary hardship, the Board may grant a variance in the application of the provisions of this Ordinance only if all of the following findings are made:

- (a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions generally created by the provisions of this Ordinance in the neighborhood or district in which the property is located.
- (b) That because of such physical circumstances or conditions there is no possibility that the property can be developed in strict conformity with the provisions of this Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (c) That such unnecessary hardship has not been created by the appellant.
- (d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
- (e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

1605.2 The Board shall have the authority to grant an extension or permit completion of a building devoted to a nonconforming use upon a lot occupied by such building, or on a lot adjoining, provided

that such lot was under the same ownership as the lot in question on the date such building became nonconforming, and where such extension is necessary and incidental to the existing use of such building, provided, however, that the floor areas of such extension shall not exceed in all one hundred (100) percent of the floor area of the existing building or buildings devoted to a nonconforming use and provided further that such extension or extensions shall be undertaken within five (5) years of the date when the use of such building became nonconforming.

### **1606 Conditional Uses**

1606.1 Under the authorization granted in Chapter 713 of the Ohio Revised Code to hear and decide special exceptions to the terms of this Ordinance, the Board shall have the power to decide applications for conditional uses in those cases specified in Article IV of this Ordinance. In considering such application, the Board shall give due regard to the nature and condition of all adjacent properties and the public interest, including specific limitations as to future expansion.

1606.2 The following basic standard shall apply to conditional uses in any "S" or "R" District.

(a) The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, its site layout and its relation to streets giving access to it shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection with it will not be hazardous, inconvenient, or conflict with the normal traffic on residential streets, both at the time and as the same may be expected to increase with any prospective increase in the population of the area, taking into account convenient routes of pedestrian traffic, particularly of children, relation to main traffic thoroughfares and to street intersections, and the general character and intensity of development of the area.

(b) The location and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

1606.3 The following basic standard shall apply to conditional uses in any "B" or "M" District:

(a) The location and size off the use, the nature and intensity of the operations involved in or conducted in connection with it, its site layout and its relation to streets giving access to it shall be such that vehicular traffic to and from the use will not be more hazardous than the normal traffic of the district, both at the time and as the same may be expected to increase with increasing development of the municipality, taking into account vehicular turning movements in relation to routes of traffic flow, relation to street intersections, sight distances, and relation to pedestrian traffic.

(b) The nature, location, size, and site layout of the use shall be such that it will be a harmonious part of the business or industrial district in which it is situated, taking into account prevailing shopping habits, convenience of access by prospective patrons, the physical and economic relationships of one type of use to another, and characteristic groupings of uses in a commercial or industrial district.

### **1607 Performance Requirements**

1607.1 The Board shall have the power to authorize issuance of a zoning certificate for uses that are subject to performance requirements as set forth in this Ordinance.

1607.2 The application for a zoning certificate for a use subject to performance requirements shall be accompanied by a plan of the proposed construction or development; a description of the proposed machinery, processes and products; and specifications for the mechanisms and techniques to be used in meeting the performance requirements.

1607.3 The Board may refer the application to one or more expert consultants qualified to advise as to whether a proposed use will conform to the performance requirements. The costs of such services shall be borne by the applicant, and a copy of any reports shall be furnished the applicant.

**1608 Interpretation of District Map**

Where the street or lot layout actually on the ground, or as recorded, differs from the street and lot lines as shown on the zoning map, the Board, after notice to the owners of the property and after public hearing, shall interpret the map in such a way as to carry out the intent and purpose of this Ordinance. In case of any questions as to the location of any boundary line between zoning districts, a request for interpretation of the zoning district map may be made to the Board and a determination shall be made by said Board.