

**INSTRUCTIONS IN CONNECTION WITH AN APPEAL**  
**TO THE BOARD OF ZONING APPEALS**  
**PURSUANT TO CHAPTER 1137 OF THE CODIFIED ORDINANCES OF**  
**THE CITY OF WYOMING**

This form is intended to provide an overview of the appeals process and to provide direction to anyone considering the filing of an appeal with the Wyoming Board of Zoning Appeals. It may also be used as a guide to help format the request.

**GENERAL INFORMATION**

As appeals are not granted simply for the convenience of the appellant, before requesting an appeal, you are strongly encouraged to consider any and all "legal" alternatives before submitting a plan that requires a variance. If an appeal is going to be sought, the letter of application must provide a general overview of the project and explain the basis for the decision to pursue the chosen option. Additionally, your appeal should include detailed descriptions of the other "legal" or less intrusive alternatives that were explored, provide an explanation as to why they were discounted, and any other information that might justify consideration of the project being proposed in lieu of these other designs.

It is strongly suggested that each item identified in the outline that follows, be fully addressed in the order that they appear. This will ensure that all of the points are discussed and will assist the Board in their review of the application. It is important to note that the Board must base its decision on their findings resulting from their review of Section 1137.04 (b) of the Code. Your application should therefore thoroughly address each of these points.

Although it may not always be necessary for plans to accompany a variance request, if the project involves the construction of a home, room addition, deck, garage, accessory building, fence, sign, or other similar structure, plans must be submitted. It is not necessary for the plans to be prepared by an architect or to include the final structural details, however, they must be clear, complete, and accurately show the size, height, layout, material components, and other architectural features of the proposed improvements in sufficient detail to present a complete understanding of the project. If the appeal is based on a setback issue, a location survey is almost always required. The absence of detail or other relevant information may significantly impact the Board's ability to decide the case or may be grounds for rejection.

A meeting schedule for the year has been approved and is attached hereto. The meetings are generally held in the City Council Chambers at 800 Oak Avenue. **The complete and accurate application must be received by the submission deadline in order to be scheduled for a given meeting. If the application does not contain all of the necessary information, the submission will be deemed incomplete and the case will be not be scheduled until all of the required information has been provided.**

In order for the Board members to fully appreciate the impact that a proposal may have on the adjoining properties and the neighborhood, they will often times visit the property prior to the hearing. On occasion, they may also solicit the opinions of the abutting property owners. Although the Board does not base its decision on the opinions of the abutting property owners, their views are important and anyone seeking an appeal is encouraged to discuss their proposal

with them as a minor design consideration may have a significant impact on the acceptance of a proposal with an adjoining property owner. If the adjoining property owners support the proposed change(s), the Board will give consideration to their opinions. Likewise, negative opinions will also be considered. Opinions, either pro or con, should be based on facts and tangible evidence whenever possible.

In passing on a request, the Board has the authority to request, (and require), design modifications and they may impose deed restrictions. If a deed restriction is imposed, the City Solicitors office will prepare any necessary documents and record them after obtaining the signature of the property owner(s). All costs associated with the preparation and recording will be billed to the property owner(s). Any such restriction must be placed of record before the zoning certificate will be issued.

Attached to this form you will find a copy of Chapter 1137 of the Codified Ordinances of the City of Wyoming. This document should be reviewed before preparing your application. This will help to familiarize you with the process and the submission requirements and help ensure that all of the items are adequately addressed in your application.

If you have any questions regarding the appeal process please feel free to contact the Building Department or Administrative offices of the City of Wyoming at 821-7600.

#### **SPECIFIC CODE REQUIREMENTS (Outline)**

Appeals must be filed within thirty (30) days after the date of the decision by the City Manager, (or representative thereof), from which the appeal is made. All appeals must be in the form of a typewritten letter and must include sufficiently detailed plans to clearly show the scope of the work, if applicable. **Eight (8) copies of the application and all of the required information, including the plans, must be submitted in order for the appeal to be considered.** A filing fee of **\$200.00 must accompany the application.**

The following information must be included when filing the appeal.

- 1) A clear and accurate description of the proposed work or use.
- 2) The occupants' telephone number and the names, addresses, and telephone numbers of the owners of all abutting and facing properties.
- 3) Building plans for every proposed structure.
- 4) A plat, (survey) drawn to scale, of the existing buildings and accessory structures showing the actual shape and dimension of the lot; the lines within which the proposed building shall be erected or altered; the existing and intended use of each existing and proposed building or part of a building; and such other information as may be helpful in considering the appeal.
- 5) Appeal requests **must** specifically address the following:
  - a) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners or other properties in the same area.

- b) That exceptional or extraordinary circumstances or conditions apply to the subject property that do not apply generally to other properties in the same area.
  - c) That the essential character of the neighborhood would not be substantially altered.
  - d) That adjoining properties would not suffer a substantial detriment as a result of the variance.
  - e) That the variance would not adversely affect the delivery of governmental services (e.g., water, sewer, garbage).
  - f) That the special circumstances or conditions do not result from any action of the property owner or any of the property owner's predecessors in title.
  - g) That the property owner's request for a variance cannot feasibly be obviated through some method other than a variance.
  - h) That the spirit and intent behind the zoning requirement affecting the area would be observed and substantial justice done by granting the variance.
- 6) The Code Section that the proposal violates.
- 7) The specific reasons for the appeal.
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**TO THE BOARD OF ZONING APPEALS:**

In accordance with plans, applications, and all data heretofore filed with the City Manager, all of which are attached hereto and made a part of this appeal, I/We the Undersigned \_\_\_\_\_ hereby affirm the statements contained in all of the exhibits transmitted herewith are true.

\_\_\_\_\_  
APPELLANT

\_\_\_\_\_  
DATE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
PHONE NUMBER

## CHAPTER 1137

### Board of Zoning Appeals

**1137.01 Board created; members and terms.**

**1137.02 Rules of Board.**

**1137.03 Officers; meetings.**

**1137.04 Powers and duties.**

**1137.05 Appeal procedure.**

**1137.06 Stay of proceedings.**

**1137.07 Hearings.**

**1137.08 Written findings of fact.**

**1137.09 Restrictive covenants.**

**1137.10 Fee.**

**1137.11 Further appeal.**

### CROSS REFERENCES

Removal of members - see CHTR. Sec. 11.03

Zoning appeals - see Ohio R.C. 713.11

Appeals from administrative agencies - see Ohio R.C. Ch. 2506

Approval of Development Plan variations - see P. & Z. 1133.02(c)(3)

#### **1137.01 BOARD CREATED; MEMBERS AND TERMS.**

The Board of Zoning Appeals shall consist of five members, one a member of City Council, and four electors of the City, and shall be appointed by City Council to serve as follows: the member of City Council and his/her successors, until their respective terms in City Council expire; and one of the four electors until January 1, 1973, one until January 1, 1974, one until January 1, 1975, one until January 1, 1976, and their successors for terms of four years each.

(Ord. 12-2012. Passed 10-15-12.)

#### **1137.02 RULES OF BOARD.**

The Board of Zoning Appeals shall adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of this chapter.

(Ord. 12-2012. Passed 10-15-12.)

#### **1137.03 OFFICERS; MEETINGS.**

The Board of Zoning Appeals shall elect by majority vote one member of such Board to be the chairperson thereof. Meetings of the Board shall be held at the call of the chairperson, and at such other times as the Board may determine. Such chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings 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.

(Ord. 12-2012. Passed 10-15-12.)

#### **1137.04 POWERS AND DUTIES.**

The Board of Zoning Appeals shall have the following powers and it shall be its duty:

- (a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the City Manager in the enforcement of the City's Planning Code, Property Maintenance Code, Zoning Code, or Sign Code or regulations promulgated thereunder. The Board of Zoning Appeals 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 and to that end shall have all the powers of the City Manager from whom the appeal is taken.
- (b) To hear and decide requests for variances as to the City's Planning Code, Property Maintenance Code, Zoning Code, or Sign Code or regulations promulgated thereunder provided all of the following items have been addressed:
  - (1) That such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by owners of other properties in the same area;
  - (2) That exceptional or extraordinary circumstances or conditions apply to the subject property that do not apply generally to other properties in the same area;
  - (3) That the essential character of the neighborhood would not substantially be altered;
  - (4) That adjoining properties would not suffer a substantial detriment as a result of the variance;
  - (5) That the variance would not adversely affect the delivery of governmental services, (e.g. water, sewer, garbage, police protection, fire protection);
  - (6) That the special circumstances or conditions do not result from any action of the property owner or any of the property owner's predecessors in title;
  - (7) That the property owner's request for a variance cannot feasibly be obviated through some method other than a variance; and
  - (8) That the spirit and intent behind the zoning requirement affecting the area would be observed and substantial justice done by granting the variance.

(c) To permit the extension of a zoning district where the boundary line of a district divides a lot held in a single ownership on June 24, 1946.

(d) To permit the erection or use of a building or the use of a premises for public utility purposes where the Board finds such public utility to be reasonably necessary for the public convenience or welfare and where such use contains conditions governing design,

construction or operation so as to adequately safeguard the health, safety, and welfare of the occupants of adjoining and surrounding property.

(e) Nothing contained herein shall permit the Board of Zoning Appeals to grant variances to any State law or administrative regulation promulgated thereunder or permit the Board to grant variances as to uses not otherwise permitted within a zoning district.  
(Ord. 12-2012. Passed 10-15-12.)

**1137.05 APPEAL PROCEDURE.**

(a) Appeals to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department or bureau of the City from any order, requirement, decision or determination made by the City Manager in the enforcement of the City's Planning Code, Zoning Code, Property Maintenance Code, or Sign Code or regulations promulgated thereunder.

(b) Such appeals shall be taken in the manner prescribed by the Board by general rule, by filing with the City Manager and with the Board not later than thirty days after the date of the City Manager's decision, which is appealed from, and notice of appeal specifying the grounds thereof. The City Manager shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from is taken.

(Ord. 12-2012. Passed 10-15-12.)

**1137.06 STAY OF PROCEEDINGS.**

An appeal stays all proceedings in furtherance of the action appealed from unless the City Manager certifies to the Board of Zoning Appeals after the notice of appeal shall have been filed with the City Manager that, by reason of facts stated in the certificate, a stay would, in the City Manager's opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by an order which may be granted by the Board, or by a court of record on application or notice to the City Manager on good cause shown.

(Ord. 12-2012. Passed 10-15-12.)

**1137.07 HEARINGS.**

The Board of Zoning Appeals shall fix a reasonable time for the hearing of the appeal, give not less than fifteen days' public notice thereof in a newspaper of general circulation, as well as give written notice of the hearing by first class mail, at least twenty days before the date of the public hearing, to the owners of property within and contiguous to and directly across the street from such parcel or parcels, to the addresses of such owners appearing on the County Auditor's current tax list or the Treasurer's mailing list and to such other list or lists that may be specified by City Council. The failure of delivery of notice to the owners of parcels entitled to notice shall not render action taken by the Board at the hearing void or voidable. The Board shall decide the appeal within thirty days of the hearing. Upon the hearing, any party may appear in person or by agent or by attorney.

(Ord. 12-2012. Passed 10-15-12.)

**1137.08 WRITTEN FINDINGS OF FACT.**

Every variance granted or denied by the Board of Zoning Appeals and/or every reversal, affirmation or modification of an order, requirement, decision or determination appealed from pursuant to Section 1137.04 shall be accompanied by written findings of fact, based on testimony and evidence, and specifying the reasons for granting or denying the variance or reversing, affirming or modifying the order. (Ord. 12-2012. Passed 10-15-12.)

**1137.09 RESTRICTIVE COVENANTS.**

In affirming or modifying orders or granting variances the Board of Zoning Appeals may impose such additional requirements on the subject property, as will, in their judgment, protect anyone affected by the affirming or modifying of such orders or their granting of such variances. Such additional requirements shall be recorded as a restrictive covenant signed by an authorized official of the City of Wyoming and by the owner at the Hamilton County Recorder's Office. All recording fees and other expenses incurred in this process shall be the sole responsibility of the owner of the property on which the order was made or the variance granted.

(Ord. 12-2012. Passed 10-15-12.)

**1137.10 FEE.**

The fee for the filing of a variance shall be in accordance with the most current schedule of fees adopted by City Council and shall be paid to the City Manager at the time the notice of appeal or request for variance is filed.

(Ord. 12-2012. Passed 10-15-12.)

**1137.11 FURTHER APPEAL.**

Any further appeal by a party aggrieved by a decision of the Board of Zoning Appeals shall be as provided by State law.

(Ord. 12-2012. Passed 10-15-12.)