

**CITY OF MENTOR  
APPLICATION FOR APPEAL  
Board of Building and Zoning Appeals**

**VAR-**\_\_\_\_ - \_\_\_\_ - \_\_\_\_

1) Address: \_\_\_\_\_ 2) Zoning Classification \_\_\_\_\_

3) Parcel Number: \_\_\_\_\_

**4) Name and Address of Applicant: (Please Print)**

Name of Applicant (s): \_\_\_\_\_

Contact Person (if other than applicant): \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Daytime Phone: \_\_\_\_\_ Email Address: \_\_\_\_\_

**5) Name and Address of Property Owner: (Written authorization required if different than applicant)**

Name of Owner (s): \_\_\_\_\_

Contact Person (if owner is a company): \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Daytime Phone: \_\_\_\_\_ Email Address: \_\_\_\_\_

**Please read the attached instructions**

6) Nature of Appeal:

7) Nature of Hardship or Practical Difficulty (per § 1131.08 M.C.O.):

8) Statement of Justification (per § 1131.08 M.C.O.):

9) Sketch illustrating variance and surrounding conditions (12 copies if exhibit is larger than 11" x 17")

**PLEASE READ:**

**10)** The undersigned applicant hereby applies for a variance or appeals for relief from a municipal administrative ruling on the basis of the representations contained herein, all of which the applicant affirms to be true. The applicant further indicates by his/her signature that he/she is in receipt of the Board's Rules of Procedure and that he or she has read and understands said rights which include the following:

A) The applicant may present documentary evidence or give testimony him or herself or by other witnesses either under oath or not under oath, at the applicants choice, unless otherwise required by the Board in support of his/her appeal and may question witnesses and members of the City administration, other than legal counsel. Unless requested, the Board will assume that the applicant does not wish to have the evidence presented under oath.

B) The applicant may refute evidence and testimony offered in opposition to its position, arguments, or contentions.

**11)** The Decision of the Board is not final until the minutes of the meeting are approved. If no objections are raised by any party at the meeting the applicant may sign an Acceptance of Conditional Approval prior to the minutes being approved to obtain a building permit. \_\_\_\_\_ (Initial)

**12)** A permit must be obtained prior to the start of construction \_\_\_\_\_ (initial)

**13)** Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**14)** Anticipated Date of Hearing: \_\_\_\_\_ 7:00 p.m. Fee Paid (\$30)

(REVISION. 1/2015 ALL OTHER VERSIONS ARE OBSOLETE)

# ENTRY OF FINAL DECISION

STAFF USE ONLY

1) Address: \_\_\_\_\_ 2) Zoning Classification: \_\_\_\_\_

3) Parcel Number: \_\_\_\_\_

15) Building or Zoning Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

16) Reason for Denial:

## Entry of Decision

17) Jurisdiction: Yes  No  Date: \_\_\_\_\_

18) Publication and Date of Publication:

19) Did the Applicant, City or Board request that the presentation of evidence be under oath or not under oath?

Under Oath  Not Under Oath

20) Entry of Decision:

- A) Withdrawn without prejudice
- B) Withdrawn with prejudice
- C) Denied for reasons stated in the record
- D) Approved without conditions
- E) Approved subject to conditions set forth below and made a part hereof

21) Decisions of the Board shall be final and binding on the applicant provided; however, that any persons or the City aggrieved by any decision of the Board may appeal said decision by filing a petition with the Common Pleas Court within ten (10) days of said decision.

\_\_\_\_\_  
Chairman Board of Building & Zoning Appeals

\_\_\_\_\_  
Planning Administrator

(REVISION. 1/2015 ALL OTHER VERSIONS ARE OBSOLETE)

**CITY OF MENTOR  
BOARD OF BUILDING AND ZONING APPEALS - APPLICATION FOR APPEAL  
-INSTRUCTIONS-**

**SITE**

1. **ADDRESS:** Address of property for which appeal is requested. If property is vacant, Planning Staff will assign a tentative address.
2. **ZONING DISTRICT:** As identified on the Official Zoning Map. The staff will assist you.
3. **PARCEL NUMBER:** The number assigned to the property by The Lake County Engineers – Tax Map Office. The staff will find this number for you.

**APPLICANT**

4. & 5. **APPLICANT, PROPERTY OWNER AND/OR THOSE WITH A VESTED INTEREST (OPTION TO PURCHASE, ETC.) REPRESENTATIVE:** The owner of the property or one having evidence of a vested interest therein for which the variance is requested must file the appeal. Other representatives may file an appeal and appear before the BZA on the owner's behalf if authorized by some evidence of the owner's approval. A copy of a purchase agreement or option instrument may give a purchaser authority to stand for appeal.

**APPEAL**

6. **NATURE OF APPEAL:** State as clearly as possible the substance of your request, for example "to construct a 2-car garage 5 feet from the rear property line".
7. **NATURE OF HARDSHIP OR PRACTICAL DIFFICULTY:** The BZA is empowered to grant variances to provisions of the Zoning Code based on findings of unnecessary hardship and/or practical difficulty (depending on the type of variance sought). State the hardship or practical difficulty. (Applicable Code Section Below)

**1131.08 REQUIRED FINDINGS FOR VARIANCE**

A) When considering a request for a variance the Board shall be subject to the powers and the limitation of powers set forth in Section 1131.04 of the Zoning Code and further subject to the required findings set forth in subparagraph (B) or subparagraph (C) depending on the type of variance sought. The applicant for variance shall have the burden of proof in these proceedings.

B) Lot Area or Set Back Areas

No variance to the provisions or requirements of the Zoning Code, pertaining to the lot area or set back shall be granted by the Board unless the Board has determined that a practical difficulty does exist or will result from a literal enforcement of the Zoning Code. The factors to be considered and weighed by the Board in determining whether a property owner, seeking an area or set back variance, has proved practical difficulty include:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
2. Whether the variance is substantial;
3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
4. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer, garbage, fire, police or other);
5. Whether the property owner purchased the property with the knowledge of the zoning restriction;
6. Whether the property owner's predicament can be obviated through some method other than a variance;
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance;
8. The granting of the variance will not be contrary to the general purpose, intent and objectives of this Zoning Code or other adopted plans of the City of Mentor.

C). Variances other than Area and Lot Set Back:

The Board may authorize a variance, other than for lot area and/or set back, in specific cases, from the strict application of the Zoning Code; provided that it has considered the factors enumerated in subparagraph (B) 1 through 8 above, and further provided that all conditions enumerated in 1 through 5 below have been met:

1. That the variance requested arises from such a condition which is unique and which is not ordinarily found in the same zoning district; and is created by the Zoning Code and not by an action or actions of the property owner or the applicant;
  2. That the granting of the variance will not adversely affect the rights of adjacent property owners or residents;
  3. That the strict application of the Zoning Code of which variance is requested will constitute unnecessary hardship upon the property owner or the applicant;
  4. That the variance desired will not adversely affect the public health, safety, morals or general welfare; and
  5. That granting the variance desired will not be opposed to the general spirit and intent of the Zoning Code.
8. **STATEMENT OF JUSTIFICATION:** State any reasons, beyond the nature of the hardship/practical difficulty, which may justify the request, for example, “neighbor at rear yard does not object”.
9. **SKETCH:** Sketches required will vary with the nature of the request. The intent is to provide all information necessary for the BZA to make a decision. The Staff will discuss the appropriate sketches with you.
- 10 – 13 **APPLICANT’S RIGHTS & SIGNATURE:** Please read this statement of your rights in the appeal process. Your signature and initials will indicate that you have read and understand them. The Planning Staff will be glad to answer any questions for you but cannot give legal advice or speak on behalf of the BZA.
14. **ANTICIPATED DATE OF HEARING & FEE:** The BZA meets on the second Tuesday of the month. The appeal will not be placed on the agenda without a signed application and fee of \$30.00. The receipt will be provided for cash or check. Make checks payable to “City of Mentor”.
- 15 – 21 **FOR ADMINISTRATIVE USE ONLY:** Please leave these items blank.

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**PLEASE READ:**

(1) **Filing Deadline:** Administrator shall give notice of the time, place, and purpose of said hearing at least five days before the hearing date by one publication in a newspaper of general circulation in the City and by written notice to the owners of property contiguous to and directly across the street from the subject property. Such written notice shall be by first class mail to the owners as shown on the current tax list. Your appeal must be submitted at least 18 days prior to the meeting. Ask the Staff for the deadline date.

(2) **Prior to the Meeting:** The applicant or his representative is encouraged to discuss with the Administrator the appeal and any witnesses, documentary evidence, or other matters pertaining to the appeal at a reasonable time prior to the hearing and preferably prior to the filing deadline. Such discussion is intended to ensure sufficient information at the hearing, protection of the rights of the applicant, and to facilitate fair and timely resolution of the appeal. The BZA meets only once a month and tabling an item due to insufficient time for review of evidence may cause serious delays in an applicant’s project.

(3) Granting of the variance does not constitute approval of a building permit. A permit must be obtained from the Building Division prior to start of construction.

**CHAPTER 1131**  
**Board of Building and Zoning Appeals**

- 1131.01 Continuation of existing board; membership, terms of office.**
- 1131.02 Organization, meetings, and rules and regulations.**
- 1131.03 Oaths and production of records and witnesses.**
- 1131.04 Powers and duties.**
- 1131.05 Appeals to the Board.**
- 1131.06 Application and procedures.**
- 1131.07 Reapplication.**
- 1131.08 Required findings for variance.**

**CROSS REFERENCES**

Charter provisions - CHTR. 6.02

Appeals from zoning decisions - see Ohio R.C. 713.11; Ch. 2506

**1131.01 CONTINUATION OF EXISTING BOARD; MEMBERSHIP, TERMS OF OFFICE.**

The Board of Building and Zoning Appeals as established by Section 6.02 of the Charter of the City of Mentor shall continue as the Board of Building and Zoning Appeals under the provisions of this Zoning Code. Membership, terms of office, and appointments shall be as set forth in Section 6.02 of the Charter of the City of Mentor. (1969 Code 150.401)

**1131.02 ORGANIZATION, MEETINGS, AND RULES AND REGULATIONS.**

The Board shall annually elect a Chairman from its own membership. Meetings shall be held at the call of the Chairman or at such times as a quorum of the Board may establish. All such meetings shall be open to the public. Minutes shall be made and maintained of all proceedings, showing the action of the Board and the vote of each member upon each question or if absent indicating such fact. It shall keep records of its examinations and other official actions all of which shall be fixed in the offices of the Administrator and shall be a public record. The Board shall adopt such rules and regulations as it deems necessary for the performance of its duties. Four members of the Board shall, for all purposes, constitute a quorum. However, it shall require the affirmative vote of four members to reverse, modify or affect any order, requirement, decision, or determination on any request or application, including a variance. (1969 Code 150.402)

**1131.03 OATHS AND PRODUCTION OF RECORDS AND WITNESSES.**

The Board's chairman, or in his absence, the acting chairman may administer oaths and compel, by subpoena, the attendance of witnesses and the production of any records or other pertinent data. The Board may on its own motion, or at the request of the appellant or the Administrator compel by subpoena the attendance of witnesses and the production of any records or pertinent data.

(1969 Code 150.403)

**1131.04 POWERS AND DUTIES.**

(a) The Board shall have the authority to interpret the Zoning Code in such a way as to carry out the intent and objectives of same when an application is filed to determine the meaning and intent of any wording or provision of the Zoning Code.

(b) The Board shall have the power to hear and decide appeal when it is alleged by the appellant that there is error in any order, requirement, decision, determination, grant or refusal made by an administrative official, except determinations of the Planning and Zoning Commission, in the enforcement and interpretation of the provisions of a Zoning Code.

(c) The Board shall have the power on appeal in specific cases to vary the application of certain requirements or provisions of the Zoning Code as will not be contrary to the public interest where, owing to exceptional condition, the literal enforcement of the provisions of the Zoning Code will result in practical difficulty or unnecessary hardship, depending upon the type of variance sought by the applicant.

(d) The powers hereby granted shall not extend to the changing of zoning classifications of any lot or parcel of land under the district classifications fixed by the Zoning Code or the Zoning Map, or to the authorization of any use which is not a permitted use authorized by the Zoning Code for the district in which such land is situated.

(1969 Code 150.404)

**1131.05 APPEALS TO THE BOARD.**

An appeal to the Board may be taken by any persons aggrieved or by any officer, department, board or bureau of the City affected by any order, requirement, decision, determination, grant or refusal made by a building inspector or the Administrator in the enforcement or interpretation of the provisions of the Building and/or Zoning Code.

An appeal to the Board shall be made within 10 days from the date of the action appealed from by filing with the Administrator a notice of appeal stating the nature of the appeal, and the substantive facts giving rise to the action appealed from, including the date thereof. The Administrator shall transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

An appeal to the Board shall stay all proceedings in furtherance of the action appealed from, unless the administrative officer whose decision is appealed shall certify to the Board, after the notice of appeal has been filed that by reason of facts stated in said certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed by other than a restraining order granted by the Board or by a court having lawful jurisdiction. (1969 Code 150.405)

**1131.06 APPLICATION AND PROCEDURES.**

(a) Any application for a variance shall be submitted to the Administrator on special forms supplied for that purpose and shall contain:

- (1) Site plan, plot plan, or development plan of the entire property being considered, drawn to reasonable scale and showing the location of all abutting streets, names and addresses of all adjacent and abutting property owners, the location of all existing and proposed structures and the types of buildings and their uses on the subject property.
- (2) A statement of justification providing substantiating evidence regarding the required findings as set forth in Section 1131.08.
- (3) A fee as set forth in Section 1129.04.

(b) Upon the filing of the application or appeal, the Administrator shall give notice of the time, place, and purpose of said hearing at least five days before the hearing date by one publication in a newspaper of general circulation in the City and by written notice to the owners of property contiguous to and directly across the street from the subject property. Such written notice shall be by first class mail to the owners as shown on the current tax list.

(c) The Board shall hold a public hearing on the application for appeal at its first meeting occurring five (5) or more days after such publication, unless good cause for a continuance is shown. The Board shall decide the case within 62 days from the date of such hearing, unless the applicant or appellant consents to a further delay. At the hearing, any party may appear in person or be represented by an agent or attorney. The Board may recess any hearing from time to time, if the time and place of the continued hearing is publicly announced at the time of adjournment; no further notice shall be required.

(d) Decisions of the Board shall be by motion. Immediately following the Board's decision, the records, including any conditions prescribed by the Board shall be filed in the Administrator's office. A notice of each decision shall be sent to the applicant within five (5) days of the date of such decision. Where special conditions or requirements are imposed they shall be incorporated on any permit issued. Violation of any condition or requirement made a part of any decision shall constitute a violation of the Zoning Ordinance and shall be punishable by revocation of the permit or variance and such other penalties as are set forth in Sections 1129.05 and 1129.99 for such violations.

(e) Decisions of the Board shall be final and binding on the applicant provided, however, that any persons or the City aggrieved by any decision of the Board may appeal said decision by filing a petition with the Common Pleas Court within ten days of said decision.  
(1969 Code 150.406)

**1131.07 REAPPLICATION.**

No application or appeal which has been denied wholly or in part by the Board shall be resubmitted until the expiration of one (1) year or more from the date of denial, except on grounds of newly discovered evidence or proof of changed conditions which would be sufficient to justify reconsideration, as determined by the Board.  
(1969 Code 150.407)

**1131.08 REQUIRED FINDINGS FOR VARIANCE.**

(a) When considering a request for a variance the Board shall be subject to the powers and the limitation of powers set forth in Section 1131.04 of the Zoning Code and further subject to the required findings set forth in subparagraph (b) or subparagraph (c) depending on the type of variance sought. The applicant for variance shall have the burden of proof in these proceedings.

(b) Lot Area or Setback Areas: No variance to the provisions or requirements of the Zoning Code, pertaining to the lot area or setback shall be granted by the Board unless the Board has determined that a practical difficulty does exist or will result from a literal enforcement of the Zoning Code. The factors to be considered and weighed by the Board in determining whether a property owner, seeking an area or setback variance, has proved practical difficulty, include:

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- (2) Whether the variance is substantial;
- (3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
- (4) Whether the variance would adversely affect the delivery of government services (e.g., water, sewer, garbage, fire, police or other);
- (5) Whether the property owner purchased the property with the knowledge of the zoning restriction;
- (6) Whether the property owner's predicament can be obviated through some method other than a variance;
- (7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance;
- (8) The granting of the variance will not be contrary to the general purpose, intent and objectives of this Zoning Code or other adopted plans of the City of Mentor.

(c) Variances Other than Area and Lot Setback: The Board may authorize a variance, other than for lot area and/or setback, in specific cases, from the strict application of the Zoning Code; provided that it has considered the factors enumerated in subparagraph (b)(1) through (8) above, and further provided that all conditions enumerated in (1) through (5) below have been met:

- (1) That the variance requested arises from such a condition which is unique and which is not ordinarily found in the same zoning district; and is created by the Zoning Code and not by an action or actions of the property owner or the applicant;
  - (2) That the granting of the variance will not adversely affect the rights of adjacent property owners or residents.
  - (3) That the strict application of the Zoning Code of which variance is requested will constitute unnecessary hardship upon the property owner or the applicant;
  - (4) That the variance desired will not adversely affect the public health, safety, morals or general welfare; and
  - (5) That granting the variance desired will not be opposed to the general spirit and intent of the Zoning Code.
- (1969 Code 150.408)