

RECORD OF ORDINANCES

Ordinance No. _____

Passed _____, 20____

1/24/14-tlf
(Ordinance, Rules & Claims)

**DID NOT PASS – ORDINANCE DIED DUE
TO LACK OF A MOTION TO READ**

Ordinance No. 16-14

An ordinance amending Chapter 1307 – Flood Damage Reduction, specifically 1307.05 APPEALS AND VARIANCES, of the Codified Ordinances of the City of North Canton, to remove the verbatim transcription of meetings requirement and update in accordance with the remainder of the codified ordinances.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON,
COUNTY OF STARK, AND STATE OF OHIO:

Section 1. That Chapter 1307 – Flood Damage Reduction, specifically 1307.05 APPEALS AND VARIANCES, of the Codified Ordinances of the City of North Canton, be, and the same is hereby amended to read as follows.

1307.05 APPEALS AND VARIANCES.

(a) Appeals Board Established.

(1) The Zoning and Building Standards Board of Appeals as established by the City of North Canton shall hear and decide appeals and requests for variances from the requirements of this chapter.

(2) The Zoning and Building Standards Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the City Engineer's office in the enforcement or administration of this chapter. Records of the Appeals Board shall be kept and filed at the City Engineer's office, 845 W. Maple St., North Canton, OH 44720.

(b) Powers and Duties.

(1) The Appeals Board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Floodplain Administrator in the administration or enforcement of these regulations.

(2) Authorize variances in accordance with subsection (d) hereof of these regulations.

(c) Appeals. Any person affected by any notice and order, or other official action of the Floodplain Administrator may request and shall be granted a hearing on the matter before the Appeals Board provided that such person shall file, within 30 days of the date of such notice and order, or other official action, a brief statement of the grounds for such hearing or for the mitigation of any item appearing on any order of the Floodplain Administrator's decision. Such appeal shall be in writing, signed by the applicant, and be filed with the Floodplain Administrator. Upon receipt of the appeal, the Floodplain Administrator shall transmit said notice and all pertinent information on which the Floodplain Administrator's decision was made to the Appeals Board.

Upon receipt of the notice of appeal, the Appeals Board shall fix a reasonable time for the appeal, give notice in writing to parties in interest, and decide the appeal within a reasonable time after it is submitted.

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(d) Variations. Any person believing that the use and development standards of these regulations would result in unnecessary hardship may file an application for a variance. The Appeals Board shall have the power to authorize, in specific cases, such variations from the standards of these regulations, not inconsistent with Federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.

(1) Application for a variance.

A. Any owner, or agent thereof, of property for which a variance is sought shall make an application for a variance by filing it with the Floodplain Administrator, who upon receipt of the variance shall transmit it to the Appeals Board.

B. Such application at a minimum shall contain the following information: Name, address, and telephone number of applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; reason for the variance request.

All applications for a variance shall be accompanied by a variance application fee set in the schedule of fees adopted by City of North Canton.

(2) Public hearing. At such hearing the applicant shall present such statements and evidence as the Appeals Board requires.

A. In considering such variance applications, the Appeals Board shall consider and make findings of fact on all evaluations, all relevant factors, standards specified in other sections of these regulations and the following factors:

1. The danger that materials may be swept onto other lands to the injury of others.
2. The danger to life and property due to flooding or erosion damage.
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
4. The importance of the services provided by the proposed facility to the community.
5. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
6. The necessity to the facility of a waterfront location, where applicable.
7. The compatibility of the proposed use with existing and anticipated development.
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
9. The safety of access to the property in times of flood for ordinary and emergency vehicles.
10. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.

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11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

B. Variances shall only be issued upon:

1. A showing of good and sufficient cause.
2. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.
3. A determination that the granting of a variance will not result in increased flood heights beyond that which is allowed in these regulations; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.
4. A determination that the structure or other development is protected by methods to minimize flood damages.
5. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

C. Upon consideration of the above factors and the purposes of these regulations, the Appeals Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of these regulations.

(3) Other conditions for variances.

A. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

B. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in subsection (d)(2)A.1. to 11. hereof have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

C. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

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(e) Procedure at Hearings.

- (1) All testimony shall be given under oath.
- (2) A complete record of the proceedings shall be kept, except minutes of executive sessions as permitted by law, but including all documents presented and a recording of the testimony of all witnesses, which shall be verified by the Board's secretary.
- (3) The applicant shall proceed first to present evidence and testimony in support of the appeal or variance.
- (4) The Administrator may present evidence or testimony in opposition to the appeal or variance.
- (5) All witnesses shall be subject to cross-examination by the adverse party or their counsel.
- (6) Evidence that is not admitted may be proffered and shall become part of the record for appeal.
- (7) The Board shall issue subpoenas upon written request for the attendance of witnesses. A reasonable deposit to cover the cost of issuance and service shall be collected in advance.
- (8) The Board shall prepare conclusions of facts supporting its decision. The Board's decision may be announced at the conclusion of the hearing and thereafter issued in writing, or its decision may be issued in writing within a reasonable time after the hearing.

(f) Appeal to the Court. Those aggrieved by the decision of the Appeals Board may appeal such decision to the Stark Court of Common Pleas, as provided in Chapter 2506 of the Ohio Revised Code.

Section 2. That if a provision of this ordinance is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

Section 3. That this ordinance shall take effect and be in full force from and after the earliest period allowed by law.

North Canton, OH
Passed:

MAYOR

SIGNED: _____, 2014

ATTEST:

CLERK OF COUNCIL