

North Canton City Council  
Community and Economic Development Committee

Resolution No. 4 - 2019

A resolution, pursuant to North Canton Codified Ordinance section 1181.04, requesting the Planning Commission review, consider, and recommend, or not recommend, Council's proposal to amend section 1179.10, Variances, subsection (c), Review by the Board, of the City's codified ordinances, to replace "public" hearing with "adjudication" hearing.

WHEREAS, while the current version of Ordinance 1179.10 requires the Planning Commission hold a "public" hearing on a proposed variance, Ohio's courts of appeal require an "adjudication" hearing be held, which is open to the public; and

WHEREAS, adjudication hearings involve the determination of rights of specific persons based upon evidence, not public opinion, presented at the hearing, where witnesses are sworn in, are subject to cross examination, documents are authenticated, and variances shall be supported by a preponderance of reliable, probative, and substantive evidence.

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

- Section 1. That, pursuant to North Canton Codified Ordinance section 1181.04, City Council requests the Planning Commission review and consider a proposal to amend subsection 1179.10(c), Review by the Board, of the City's codified ordinances, from "public" hearing to "adjudication" hearing. A copy of the proposed amended ordinance is attached hereto as Exhibit "A" and is incorporated herein by this reference.
- Section 2. That if a provision of this resolution is or becomes illegal, invalid or unenforceable, that it shall not affect the validity or enforceability of any other provision of this resolution.
- Section 3. That this resolution shall take effect and be in full force from and after the earliest period allowed by law.

Passed in Council this 24 day of June, 2019

  
David Held, Mayor

Signed: 6/24, 2019

ATTEST:

  
Laura Brown, Director of Finance

**1179.10 VARIANCES.**

Any request for a variance shall be considered an appeal. The Zoning Board of Appeals may authorize in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest according to the following procedures, which shall be in addition to the requirements for an appeal:

(a) Application Requirements. An application for a variance shall be filed with the Superintendent of Permits and Inspection for review by the Zoning Board of Appeals upon the forms provided, and shall be accompanied by the following requirements necessary to convey the reason(s) for the requested variance:

- (1) Name, address and phone number of applicant(s);
- (2) Proof of ownership, legal interest or written authority;
- (3) Description of property or portion thereof;
- (4) Description or nature of variance requested;
- (5) Narrative statements establishing and substantiating the justification for the variance pursuant to subsection (c) below;
- (6) Site plans, floor plans, elevations and other drawings at a reasonable scale to convey the need for the variance;
- (7) Payment of the application fee as established by Council;
- (8) For an Area Variance: A list of all owners of property adjoining or across the street from the property on which the variance is proposed, including their addresses and permanent parcel numbers;
- (9) For a Use Variance: A list of all owners of property lying within 200 feet of any part of the property on which the variance is proposed, including their addresses and permanent parcel numbers;
- (10) Any other documents deemed necessary by the Superintendent of Permits and Inspection.

(b) Review for Completeness. Upon receipt of a written request for variance, the Superintendent of Permits and Inspection shall make a preliminary determination whether such application provides the information necessary for review and evaluation. If it is determined that such application does not provide the information necessary for such review and evaluation, the Superintendent of Permits and Inspection shall within seven (7) days so advise the applicant of the deficiencies and shall not further process the application until the deficiencies are corrected.

(c) Review by the Board. Although similar to the notice procedures established for appeals in Sections 1179.03 and 1179.04, the Board shall hold an adjudication hearing and give notice of the same. An adjudication hearing involves the determination of rights of specific persons based upon evidence, not public opinion, presented at the hearing, where witnesses are sworn in, are subject to cross examination, documents are authenticated, and the grant of a variance shall be supported by a preponderance of reliable, probative, and substantive evidence. The Board shall review each application for a variance to determine if it complies with the purpose and intent of this Ordinance and evidence demonstrates that the literal enforcement of this Ordinance will result in practical difficulty for an area variance or unnecessary hardship for a use variance.

(1) Area Variance. The following factors shall be considered and weighed by the Board to determine practical difficulty:

A. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district. Examples of such special conditions or circumstances are exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to non-conforming and inharmonious uses, structures or conditions;

B. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

C. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;

D. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;

E. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, trash pickup;

F. Whether the property owner purchased the property with knowledge of the zoning restrictions;

G. Whether special conditions or circumstances exist as a result of actions of the owner;

H. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

I. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance; and

J. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

(2) Use Variance. In order to grant a use variance, the Zoning Board of Appeals shall determine that strict compliance with the terms of this Ordinance will result in unnecessary hardship to the applicant. The applicant must demonstrate such hardship by clear and convincing evidence that all of the following criteria are satisfied:

A. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located;

B. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;

C. The hardship condition is not created by actions of the applicant;

D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;

E. The granting of the variance will not adversely affect the public health, safety or general welfare;

F. The variance will be consistent with the general spirit and intent of the Ordinance; and

G. The variance sought is the minimum that will afford relief to the applicant.

(d) Requests for Additional Information. The Zoning Board of Appeals may request that the applicant supply additional information that the Board deems necessary to review and evaluate the request for a variance.

(e) Additional Conditions and Safeguards. The Board may further prescribe any conditions and safeguards that it deems necessary to ensure that the objectives of the regulation(s) or provision(s) to which the variance applies will be met.

(f) Action by the Board. The Board shall approve, approve with supplementary conditions as specified in subsection (e) above, or disapprove the request for variance according to the procedures established for appeals in Section 1179.07. In the event the Zoning Board of Appeals approves or approves with supplementary conditions the requested variance, such approval shall require a concurring vote of three (3) members of the Zoning Board of Appeals.

(g) Term and Extension of Variance. Variances shall be nonassignable and shall expire one year from the date of their enactment, unless prior thereto, the applicant commences actual construction in accordance with the granted variance or an extension of time has been granted by the Zoning Board of Appeals. There shall be no modification of variances except by further consideration of the Board. Once the time limit pursuant to this Section has expired, a request for a variance shall be considered to be a new application for a variance and shall meet all requirements for application and review pursuant to this Section.