

ORDINANCE NO. 2022-23
INTRODUCED BY: Mayor Bodnar

**AN ORDINANCE ADOPTING MAYFIELD VILLAGE CODIFIED ORDINANCE
CHAPTER 122 APPEALS OF DECISIONS OF THE BOARD OF ZONING APPEALS
TO COUNCIL**

WHEREAS, pursuant to Mayfield Village Codified Ordinance Section 1105.02, and Article 4, Section 12 of the Village's Charter decisions of the Board of Zoning Appeals can be appealed to the Mayfield Village Council; and

WHEREAS, the Mayfield Village Council deems it in the best interest and for the health, safety and welfare of Mayfield Village and its residents to enact Chapter 122 of the Codified Ordinances as set forth below in order to allow a procedure for appeals of decisions of the Board of Zoning Appeals to Mayfield Village Council.

NOW, THEREFORE, BE IT ORDAINED by the Council of Mayfield Village, Cuyahoga County, State of Ohio, that:

SECTION 1. Chapter 122 of the Village's Codified Ordinances is hereby enacted to read as fully set forth in Exhibit "A" attached hereto and incorporated herein by reference.

SECTION 2. Any sections of the Codified Ordinances in conflict herewith are hereby and herein repealed and amended accordingly. All other provisions of the Village Codified Ordinances not inconsistent herewith shall remain in full force and effect.

SECTION 3. The Clerk of Council is authorized and directed to forward a certified copy of this Ordinance to the Codifier of Mayfield Village.

SECTION 4. The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 5. This Ordinance shall take effect after adoption and at the earliest time allowed by law.

STEPHEN SCHUTT
Council President

First Reading: _____, 2022

Second Reading: _____, 2022

Third Reading: _____, 2022

PASSED: _____, 2022

BRENDA T. BODNAR, Mayor

APPROVED AS TO FORM:

DIANE A. CALTA,
Director of Law

ATTEST: _____
MARY E. BETSA, MMC
Clerk of Council

EXHIBIT A

CHAPTER 122

APPEALS OF DECISIONS OF THE BOARD OF ZONING APPEALS TO COUNCIL

122.01 BOARD'S STANDARD

- (A) The Board shall not grant a variance or exception to the zoning regulations or building code, unless the applicant has shown that the literal application of the zoning or building code would result in practical difficulties as a result of some peculiar or unique condition or circumstance pertaining to the zoning lot in question.
- (B) The seven (7) non-exclusive factors to consider whether practical difficulties exist are as follows:
- 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 being requested;
 - 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 determinant as a result of the variance;
 - 4) Whether the variance would adversely affect the delivery of governmental service;
 - 5) Whether the property owner purchased the property with knowledge of the zoning restriction;
 - 6) Whether the property owner's predicament feasibly can be obviated through some other method other than a variance; and
 - 7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

122.02 RIGHT TO APPEAL

After the Board has rendered its decision on a particular case, any interested party may appeal the decision of the Board to Council within ten (10) days of receiving notice of such decision, or approval of the minutes at which such action was determined, whichever is the earlier.

122.03 ROLE OF COUNCIL

In hearing appeals of a decision of the Board under Codified Ordinance Section 1105.02(d), and Article 4, Section 12(A) of the Village's Charter, Council may review the transcript and minutes of the Board hearing, or have a rehearing in front of Council, and may affirm the decision of the Board, or with a two-thirds (2/3rd) majority vote of all members elected or appointed, modify or reverse the decision.

122.04 ABUSE OF DISCRETION STANDARD OF REVIEW

Council, whether reviewing the transcript or having a rehearing, shall consider an appeal of a decision of the Board based upon an abuse of discretion standard i.e., by deciding whether the Board's decision when it applied the standard in 122.01 was unreasonable, arbitrary, or unconscionable. When applying an abuse of discretion standard, Council may not substitute its judgment for that of the Board. The decision of the Board shall be affirmed by Council if Council finds there is any reasonable basis for the Board's decision.

122.05 TIME ALLOWED and PROCEDURE FOR REHEARING

Unless otherwise determined, if a rehearing is held, the rehearing shall be held as part of a regular meeting(s) of Council and all testimony before Council shall be given under oath or affirmation, which shall be administered by a person qualified to administer oaths. The rehearing shall proceed as follows:

- (A) Appellant (persons in support of the appeal) and any aggrieved party (persons appearing in opposition to the appeal) shall be permitted a total of fifteen (15) minutes each, which includes ten (10) minutes for the presentation of evidence, statements and arguments and five (5) minutes for rebuttal and a brief closing statement, at the public hearing before Council. In addition, Council may permit:
 - (1) A reasonable amount of additional time for cross-examination and redirect examination of Appellant's witnesses.
 - (2) A reasonable amount of additional time for cross-examination and redirect examination of any aggrieved party's witnesses.
 - (3) The administration, including the Building Commissioner and his or her staff, may be given a reasonable amount of time by the President of Council for the presentation of any information that may be necessary to the appeal.
- (B) The President of Council shall have the authority to deter repetitious and irrelevant testimony and shall, unless otherwise directed by a simple majority of Council, have authority to extend the time periods specified above, when it is appropriate and in the interest of affording a fair hearing to all interested parties.
- (C) By majority vote, Council may waive the requirements of this section in order to conduct a hearing in a manner appropriate for Council to fairly consider the appeal.

122.06 FINDINGS OF FACT AND CONCLUSIONS OF LAW

If, by a two-thirds (2/3rd) vote of all members elected or appointed, Council votes to modify or overturn the decision of the Board, Council shall issue written findings of fact and conclusions of law. Or, Council shall prepare written findings of fact and conclusions of law if, prior to closing the rehearing, the Appellant, or an aggrieved party requests Council make written findings of fact and conclusions of law. In such event, Council shall direct the Village's Law Director to draft a resolution setting forth the factual and legal basis on which Council has found an abuse of discretion, which findings shall be considered and adopted by resolution at a subsequent regular meeting of Council.