

ORDINANCE NO. 529-91

AN ORDINANCE TO PROVIDE FOR THE COMPREHENSIVE ZONING OF THE VILLAGE OF TONTOGANY, WOOD COUNTY, OHIO: ESTABLISH THE USE DISTRICTS, HEIGHTS AND AREA REGULATIONS; CONTROL NONCONFORMING USES; PROVIDE FOR OFF-STREET PARKING; AUTHORIZE CONDITIONAL ZONING CERTIFICATES; ESTABLISH A PLANNING COMMISSION; PROVIDE FOR THE ADMINISTRATION AND ENFORCEMENT OF THE ORDINANCE; ESTABLISH A ZONING DISTRICT MAP; ESTABLISH PRODECURES FOR AMENDMENT THERETO; AND TO REPEAL EXISTING ZONING ORDINANCES AND RESOLUTIONS TO THE VILLAGE OF TONTOGANY.

BE IT ORDAINED, BY THE COUNCIL OF THE VILLAGE OF TONTOGANY, STATE OF OHIO, A MAJORITY OF ALL THE MEMBERS ELECTED THERETO CONCURRING:

SECTION 1. SCOPE OF REGULATION

Except as provided by this ordinance and except after obtaining written permission from the enforcing officer:

1. No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered, nor shall any building or land be used, except for a purpose permitted in the district in which the building or land is located.
2. No building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the yard area regulations or height limits herein established for the district in which the building is located.
3. The minimum yards, parking spaces, and other open spaces required by this Zoning Code for any building hereafter erected, shall not be encroached upon or considered as parking yard or open space requirements for any other building, nor shall any lot area be reduced below the district requirements of this Zoning Code.

In interpreting and applying the provisions of this Zoning Code, the same shall be held to be the minimum requirements for the promotion of public safety, health, convenience, comfort, prosperity and general welfare. It is not intended by this Zoning Code to interfere with or abrogate or annul any easements, covenants or other agreements between parties. However, where this Zoning Code imposes a greater restriction upon the use of buildings or premises or upon height of buildings or requires larger open spaces than are imposed or required by any easements, covenants, agreements, other ordinances, rules, regulations or permits, the provision of this Zoning Code shall govern.

SECTION 2. DEFINITIONS

For the purpose of this Ordinance, certain terms and words are herein defined as follows:

Words used in the present tense include the future, the singular number includes the plural, and the plural the singular; the word "building" includes the word "structure" and the word "lot" includes the word "plot"; the word "shall" is mandatory and not directory. Any word not herein defined shall be construed in its generally accepted sense.

Accessory Building

A subordinate building or portion of the main building, the use of which is incidental to that of the main building.

Alley

A public thoroughfare not over twenty feet wide.

Apartment House

See "multiple dwelling".

Basement

A story all or partly underground but having at least one half of its height below the average level of the adjoining ground.

Boarding House

A building other than a hotel, where lodging and meals, for five or more persons, are served for compensation.

Building

A structure having a roof supported by walls, and when separated by a party wall without opening, it shall be deemed a separate building.

Height of Building

The vertical distance from the established sidewalk grade at the center of the front of the building, to the highest point of the roof surface of a flat roof, to the deck line of mansard roofs and to the mean height level between eaves and ridge for gabled, hip and gambrel roofs; for building

setback from the street line, "height of building" may be measured from the average elevation of the finished grade along the front of the building.

Conditional Use

A use permitted within a district other than a principally permitted use, requiring a conditional use permit and approval of the Planning Commission.

Conditional uses permitted in each district are listed.

Conditional Use Permit

A permit issued by the zoning inspector upon approval by the Planning Commission to allow a use other than a principally permitted use to be established within the district.

Court

An open, unoccupied, unobstructed space, other than a yard on the same lot as the building. An inner court is a court surrounded on all sides by walls or by walls and a lot line. An outer court is a court extending to a court or way, or to a front or rear yard.

Dwelling

Any house or building or portion thereof which is occupied in whole or in part as the home, residence or sleeping place of one or more persons, either permanently or transiently, but not to include house trailers or mobile homes.

Multiple Dwelling

A building or portion thereof designed for or occupied as the home of three or more families or households, living independently of each other, including tenement houses, apartment houses or apartment hotels.

Family

One or more persons occupying a premise and living as a single household unit; as distinguished from a group occupying a boarding house, a lodging house, club, fraternity, or hotel.

Fence

Fences shall include all structures used as barriers or to demarcate a boundary, but shall not include ornamental structures of less than one foot in height.

Garage

A building or any portion thereof in which one or more motor vehicles are housed, kept or repaired, not including exhibition or show rooms.

Garage Community

A series of private garages, one story in height, located jointly on a parcel of land under a single ownership.

Home Occupation

An occupation conducted in a dwelling unit.

House Trailer

Any self-propelled and nonself-propelled vehicle as designed, constructed, reconstructed, or added to by means of accessories in such manner as will permit the use and occupancy thereof for human habitation, when connected to indicated utilities, whether resting on wheels, jacks, or other temporary foundation and used or so constructed as to permit its being used as a conveyance upon the public streets or highways.

Hotel/Motel

A building occupied as the more-or-less temporary abiding place of individuals who are lodged with or without meals and in which there are more than five rooms usually

occupied, singly and no provisions made for cooking in any individual apartment (room).

Lodging House

A building other than a hotel, where lodging for five or more persons is provided for compensation.

Lot

A place or parcel of land occupied or to be occupied by one building and its accessory building including the open space required under this ordinance.

Lot, Corner

A lot abutting on two or more streets at their intersection, providing the angle at which the streets intersect does not exceed one hundred thirty-five degrees. A portion of a corner lot distance more than one hundred feet from the corner shall be treated as an interior lot.

Lot, Interior

A lot the side lines of which do not abut on any street.

Lot Lines

The lines bounding a lot so defined herein.

Lot, front, rear and depth of

The front line of a lot is that boundary line which borders on the right-of-way. In the case of a corner lot, the owner may elect by statement on his plans, either right-of-way boundary line as the front. In the case of a triangular or gore lot, the rear is the boundary line not bordering on the right-of-way. The depth of a lot is the dimension measured from the front of the lot to the entrance rear line of the lot. In case of irregular shaped lots, the mean depth shall be taken.

Untitled Manufactured Home  
(formerly Mobile Home)

Any non-selfpropelled vehicle so designed, constructed, reconstructed, or added to by means of accessories in such manner as will permit the use and occupancy thereof for human habitation, when connected to utilities, whether resting on wheels, jacks, blocks, or other temporary foundation and used or so constructed as to permit if being used as a conveyance upon the public streets and highways and exceeding a gross weight of four thousand five hundred (4,500) pounds and an overall length of thirty (30) feet.

Mobile Home Park

Any site, or tract of land, upon which three or more mobile homes used for habitation are parked, either free of charge or for revenue purposes; including any roadway, building, structure, vehicle or enclosure used or intended for use as a part of the facilities of such park.

Motel

See hotel.

Nonconforming Use

A use of a building or land that does not agree with the regulations of the Use District in which it is located.

Parking space, off-street

For the purpose of this ordinance, an off-street parking space shall consist of an area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room, but shall be located totally outside of any street or alley right-of-way.

Right-of-way

A strip of land taken or dedicated for use as a public way. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, lighting, and drainage facilities, and may include special features (required by the topography or treatment) such as grade separation, landscape areas, viaducts and bridges.

Setback Line

The set back line is the minimum horizontal distance between the road or street right-of-way and the building line.

Stable

Any building or portion thereof which is used in whole or in part for the care and shelter of horses, cattle or other similar animals either permanently or transiently.

Story

The portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between such floor and the ceiling next above it.

Story, Half

A half story is a story which is situated under a sloping roof, the floor area which does not exceed one-half of the floor area of the floor immediately below it and which does not contain an independent apartment. A half story shall not be counted as a story for the purpose of determining yard dimensions.

Streets, Public

A public thoroughfare which has been dedicated or deeded to the public for public use and which affords principal means of access to abutting property.

Structure

Anything, constructed or erected, the use of which requires a more-or-less permanent location on the ground or attachment to something having a firm location on the ground. Structure includes buildings, commercial radio or TV towers, sheds, and permanent signs - but excludes fences.

Structural Alterations

Any change in the supporting members of a building, such as bearing walls, columns, beams or girders.

Use

The specific purposes for which land or a building is designated, arranged, intended, or for which it is or may be occupied or maintained.

Variance

A variance is a modification of the strict terms of the relevant regulations where such modification will not be contrary to the public interest and where owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship.

Yard

An open space unoccupied and unobstructed by any structure or portion of a structure, lying between a structure and adjoining lot lines.



### SECTION 3. GENERAL REGULATIONS

In order to regulate and district the location of trades and industries and the location of buildings erected or altered for specified use, the Village of Tontogany is hereby divided into "Use Districts", of which there shall be seven, known as:

- A. Agricultural District
- B. Residence District, R-1
- C. Residence District, R-2
- D. Untitled Manufactured Home Park District
- E. Commercial District
- F. Central Business District
- G. Industrial District

The boundaries of such districts are shown upon the map attached hereto and made a part of the Ordinance, being designated as the "USE DISTRICT MAP", and said map and all notation, references, and other things shown thereon shall be as much a part of this Ordinance as if the matters and things set forth by said map were fully described herein.

Except as herein before provided, no building shall be erected or structurally altered, nor shall any building or premises be used for any other purpose other than is permitted in the USE DISTRICT in which such building or premises is located.

Any territory embraced with any future enlargement of the corporate limits of the Village of Tontogany shall be deemed in the Agricultural District thereof until otherwise classified by the Village Council.

#### NEW SUBDIVISIONS

Whenever any owner or owners of land classified by the Zoning Ordinance as Agricultural shall have platted the same into lots and blocks not of record at the time of passage of this Zoning Ordinance, or shall thereafter replat the same, any part of which shall be for the purpose of other than that permitted in the Agricultural District, said owner or owners shall immediately apply to the Planning Commission to have said land rezoned according to the procedure outlined in Section 11.

#### BOUNDARIES OF DISTRICTS

When uncertainty exists with respect to boundaries of the various districts as described herein or as indicated on the Zoning Maps, the following rules shall apply:

1. District boundary lines are either the center lines of railroads, bridges, highways, streets, alley or easements or boundary lines of sections, quarter sections, tracts, subdivisions, lots or such lines extended, unless otherwise indicated.
2. In areas not subdivided into lots and blocks, wherever a district is indicated as a strip adjacent to and paralleling a street or highway, the depth of such strip shall be two hundred feet measured at right angles from the street or highway line and the length of frontage shall be the entire tract of land along such highway, unless otherwise indicated.

#### SECTION 4. USE DISTRICTS

##### A. Agricultural District

In the Agricultural District all buildings and premises, except as otherwise provided in the Ordinance, may be used for any of the following uses:

1. Raising of crops.
2. Grazing of farm animals.
3. Horticulture and truck gardening.
4. One-family dwellings.

##### B. Residence District - R-1

In the R-1 Residence District no building or premises except as otherwise provided in this Ordinance shall be erected, altered or used except for one or more of the listed uses.

##### A. Uses Permitted

1. One-family dwellings. *Take*
2. ~~Two-family dwellings.~~ *OUT*
3. Churches.
4. Schools.
5. Libraries.
6. Municipal community buildings, parks and playgrounds.
7. Accessory buildings - including a private garage, a private swimming pool, tennis court. A private garage may exceed a three-vehicle capacity provided the area of the lot whereon such private garage is to be located shall contain not less than three thousand square feet for each vehicle stored.

8. Professional and semi-professional occupations where a part of the property is occupied as a residence by such professional or semi-professional provided:
  - a. There is no selling of a commodity.
  - b. There is no audible sound at the outside of the building.
  - c. There is no name plate exceeding one square foot in area.
  - d. There is no outside employee except the resident plus one additional full or part-time employee.

B. Conditional Uses - subject to procedure of approval as provided in Section 10.

1. Home occupation provided:
  - a. Such occupation is conducted wholly within the dwelling or an accessory building.
  - b. Floor area devoted to such use does not exceed twenty-five percent (25%) of the total ground area occupied by buildings on the lot.
  - c. Such use is not objectionable due to noise, lighting, hours of operation, traffic generated or hazardous or noxious process to adjoining properties.
  - d. There is no name plate exceeding one square foot in area.
2. No sign exceeding eight square feet in area pertaining to the lease, hire or sale of a building or premises shall be permitted in the R-1 Residence District.

C. Residence District - R-2

In the R-2 Residence District no building or premises except as otherwise provided in the Ordinance shall be erected, altered or used except for one or more of the listed uses.

A. Uses Permitted

1. Any use permitted in the R-1 Residence District.
2. Multiple dwellings.
3. Hotels, including accessory service therein; restaurants and such facilities as are required for the operation of a hotel or apartment house, or for the use or entertainment of guests or tenants of the hotel or apartment house, when conducted and entered only from within the building, provided no window or display sign is used to advertise such use.

4. Garage community.
5. Hospitals and clinics.
6. Accessory buildings and uses customarily incident to any of the above uses when located on the same lot and not involving the conduct of a business.
7. Institutions of an educational or philanthropic nature other than correctional institutions.
8. Social and fraternal organizations.

B. Conditional Uses

Same as R-1 Residence District and subject to same conditions and procedures.

- C. No sign exceeding eight square feet in area pertaining to the lease, hire, or sale of a building or premise shall be permitted in the R-2 Residence District.

D. Untitled Manufactured Home Park District

Mobile home parks shall be located only in the Mobile Home Park District. Mobile home parks shall meet the requirements of Chapter HE-27 of the Ohio Sanitary Code adopted by the Public Utilities Council in the authority of the Ohio Revised Code Section 3733.07.

A. Uses Permitted

1. Untitled Manufactured homes.
2. House trailers.

E. Commercial District

In the Commercial District, all buildings and premises except as otherwise provided in this Ordinance, may be used for any permitted uses in the R-2 Residence District, or for the following listed uses:

A. Uses Permitted

1. Food sales, including supermarkets.
2. Barber and beauty shops.
3. Dry cleaning and laundry establishments.
4. Prescription drug sales.
5. Hardware sales.
6. Variety stores.
7. Clothing and apparel stores.
8. Shoe repair shops.
9. Florist shops.
10. Eating and drinking establishments.

11. Appliance stores.
12. Furniture stores.
13. Jewelry and gift stores.
14. Shoe sales.
15. Banks, savings or loan businesses.
16. Sales and distribution offices.
17. Newspaper, printing, reproduction services.
18. Offices - business, dental and medical.
19. Bowling alleys.
20. Skating rinks, indoor.
21. Theaters.
22. Motels.
23. Funeral homes.
24. Automobile, automobile parts, farm implement sales and services.
25. Commercial parking lots.
26. Bakery.
27. Ice plants.
28. Millwright.
29. Gas stations.
30. Veterinary hospitals.
31. Any other retail business, service or public utility not involving manufacturing on the premises except of products the major portion of which are to be sold at retail at that location by the manufacturer to the consumer, and provided that not more than five operators should be employed in such manufacture.

All businesses within the Commercial District must meet the standards for safety, air, and water pollution as established by the State of Ohio.

#### B. Conditional Uses

Any commercial building that is determined not to be injurious, noxious, or offensive to a surrounding neighborhood by reason of the emission of odors, fumes, dust, smoke, vibration, noise, or lighting as approved by the Planning Commission.

#### F. Central Business District

The principal uses permitted in the Central Business District are:

1. Offices.
2. Hotels.
3. Establishments selling goods and services at retail and conducted entirely within an enclosed building.
4. Restaurants.
5. Theaters and other places of amusement conducted entirely within an enclosed building and that are not detrimental to the neighborhood.

6. Banks and other financial institutions.
7. Residences above the ground level.
8. Gas stations.

Access to parking facilities shall be only from the rear and side alleys.

#### G. Industrial District

This district is established to accommodate industrial uses in the fields of manufacturing, processing, wholesaling, and distributing. Due to continuing advancement in industrial plat design and technology, it is not practical to say which industries shall be compatible with our community, except by performance standards.

All industries must meet the standards for safety, air and water pollution as established by the State of Ohio.

##### A. Uses Permitted

1. All uses permitted in the commercial district.
2. Railroad facilities.
3. Utility substations.
4. Storage of petroleum products, chemicals, and gas under pressure.
5. Manufacturing.

##### B. Conditional Use

Any industrial building that is determined not to be injurious, noxious, or offensive to the surrounding neighborhood by reason of the emission of odors, fumes, dust, smoke, vibrations, noise, or lighting as approved by the Planning Commission.

#### SECTION 5. NONCONFORMITIES

Where, at the time of adoption of this ordinance, lawful uses of land or building exist which would not be permitted by the regulations imposed by this ordinance, the uses may be continued so long as they remain otherwise lawful, provided:

1. No such nonconforming uses of buildings shall be enlarged or increased, nor extended, to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.

2. Any building or structure devoted to a nonconforming use which may be destroyed or damaged by fire or otherwise to the extent of fifty (50%) percent or more of its value shall not be repaired or rebuilt, nor shall another building or structure be erected on the premises except in conformity with the provisions of this ordinance.
3. If any nonconforming uses of land are discontinued or abandoned for more than two (2) years (except when government action impedes access to the premises), any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.
4. Whenever a nonconforming use has been changed to a use of higher classification or to a conforming use, such a use cannot thereafter be changed to one of a lower classification or back to a nonconforming use.
5. Any use which is permitted as a conditional use in a district under the terms of this ordinance shall not be deemed a nonconforming use in such district but shall be considered a conforming one.
6. A complete record of the location, nature and extent of a nonconforming use shall be made and kept by the enforcing officer.

SECTION 6. LOT COVERAGE AND SETBACK LINES



1. In R-1 Residence Districts the total area of buildings shall not exceed 25% of the lot area. No building shall be nearer than five feet from adjoining lot lines. No buildings shall be nearer than ten feet from the right-of-way of a side street, front of the building shall conform to established setback lines, provided that in plats for future development, setback lines shall be 40 feet from the right-of-way. One (1) off-street parking space shall be provided for each dwelling unit.
2. In R-2 Residence Districts the total area of building shall not exceed 50% of the lot area. No building shall be nearer than five feet from adjoining lot lines. Building shall set back from street the average distance of other buildings on the street, but in no case less than 25 feet. On corner lots no building shall be nearer than 10 feet from the right-of-way of the side street. Parking for multiple dwellings of 1½ autos per unit shall be provided to the rear of the setback lines.

3. In an Agriculture District setback and side lines shall conform with those in an R-1 District.
4. In Commercial Districts buildings shall set back from the street to conform to the present building lines as established by the existing buildings now erected thereon, provided that where no setback lines have been established, the same shall be a minimum of 25 feet from the right-of-way. In no case shall the setback line be less than 25 feet.
5. In the Central Business District, there shall be no front, side or rear yard requirements.
6. Industrial District coverage shall conform to the State Building Code, but in no event to be less than 50 feet from the right-of-way.
7. Nonresidential buildings or uses shall not be located or constructed closer than 40 feet to any lot line of a residential district. If screening provided as approved by the Zoning Inspector the minimum yard requirements may be reduced to 50 percent of the requirements.
8. In Industrial District, allowance shall be made for parking of all the employees' automobiles off of the street or highway.

## SECTION 7. SUPPLEMENTAL REGULATIONS

### 1. Swimming Pools

- A. Private. No private swimming pool, exclusive of portable swimming pools with a diameter less than twelve (12) feet or with an area less than one hundred (100) square feet shall be allowed in any commercial or residential district, except as an accessory use and unless it complies with the following conditions and requirements.
  1. The pool is intended and is to be used solely for the enjoyment of the occupants or the principal use of the property on which it is located.
  2. The swimming pool, or the entire property on which it is located shall be walled or fenced to prevent uncontrolled access by children from the street or from adjacent properties. Said fence or wall shall be not less than forty-two (42) inches in height and maintained in good condition with a gate and lock.



3. The pool is not be located in the front yard of the property.

B. Public. Permitted in commercial or residential districts. Pool and accessory structures shall not be closer than fifty (50) feet to any property line.

2. Fences

In any front yard, no fence or wall shall be permitted which materially impedes vision across such yard above the height of forty-two (42) inches.

SECTION 8. ADMINISTRATION

Creation and Membership of Planning Commission

A Planning Commission, hereafter referred to by the word "Commission", is hereby authorized to be established. Such commission is composed of five members, who serve without compensation. The Mayor is a member of the Commission by virtue of his office. A second member must be a member of Village Council. He is elected to the Commission by Council to serve during his term as councilman. The other three members of the Commission must be residents of the Village who are appointed by the Mayor and confirmed by Council. Initially, the Mayor appoints one member for a term of two years, a second for four years, and a third for six years. Thereafter, the Mayor appoints one new citizen member every two years to a six-year term on the Commission. Vacancies shall be filled for unexpired terms only.

Any member of the Commission may be removed for neglect of duty after public hearing before Council and resolution adopted by said Council.

Chairman and Meetings

1. The Commission shall within ten days after appointment meet and organize, electing a chairman and secretary from their membership. All meetings of the Commission shall be held at the call of the chairman and at such times and places as the board may determine. Such chairman, or in his absence, the acting chairman, may administer oaths and require the attendance of witnesses. All meetings of the Commission shall be open to the public.

2. The Commission shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examination and other official actions. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision, or determination of the Commission shall immediately be filed in the Office of the Village Clerk and shall be public record. In the performance of its duties the Commission may incur such expenditures as shall be authorized by the Village Council. The Commission shall adopt its own rules of procedure not in conflict with the statute.

#### Duties of Planning Commission

For the purpose of this ordinance the Commission shall have the following duties:

1. Initiate proposed amendments to this ordinance.
2. Review all proposed amendments to this ordinance and make recommendations to the Village Council.
3. Hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, or determination made by the Zoning Inspector.
4. To authorize such variances from the terms of this ordinance as will not be contrary to the public interest, where, owing to the special conditions, a literal enforcement of this ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.
5. To grant conditional use permits.
6. To permit a temporary building for business of industry in the R-1 or R-2 Residence Districts which is incidental to and necessary for the residential development for a period of not more than one year.

#### SECTION 9. PROCEDURE AND REQUIREMENTS FOR APPEALS AND VARIANCES

##### Appeals

Appeals to the Commission concerning interpretation or administration of this ordinance may be taken by any person aggrieved or by any officer or bureau of the legislative authority of the Village affected by any decision made by the administrative official charged with the enforcement of this ordinance. Such appeals shall be taken within such time as shall be prescribed by the Commission by general rule by filing with the officer from whom the appeal is taken and with

the Commission a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Commission all the papers constituting the record from which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from unless the officers from whom the appeal is taken certified to the Commission after the notice of appeal has been filed with him by reasons of fact stated in the certificate a stay would in his opinion, cause imminent peril of life or property, in which case proceedings shall not be stayed otherwise than a restraining order by a court of record on application, or notice to the officer from whom the appeal is taken and on due cause shown.

#### Variances

The Commission may authorize upon appeal in specific cases such variances from the terms of this ordinance in which it is alleged that practical difficulties or particular hardship, not intended or not common to other owners or property in the vicinity will be imposed in carrying out the strict letter of any such regulations, if it is determined that such variance will not be contrary to the public interest.

The following standards shall prevail when considering approval of variances:

1. The applicant's supposed hardship cannot be one of economics alone. For instance, a variance shall not be granted to allow construction of a service station in order that the property owner can sell the land for a higher price than he could get with the existing residential zoning.
2. The hardship must result from circumstances affecting a particular and unique piece of property, and not from a general condition throughout the neighborhood.
3. A variance must not alter the essential character of the neighborhood.
4. Any hardship must result from the requirements in the zoning ordinance and not from the applicant's own actions.
5. A variance must not be contrary to the public interest even if a hardship can be established.

### Applications and Standards for Variances

A variance from the terms of this ordinance shall not be granted by the Commission unless and until a written application for a variance is submitted to the zoning inspector and the Commission containing:

1. Name, address and phone number of applicants.
2. Legal description of property.
3. Description of nature of variance requested.
4. A narrative statement demonstrating that the requested variance conforms to the following standards:
  - a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structures, or buildings in the same district.
  - b. That a literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.
  - c. That special conditions and circumstances do not result from the actions of the applicant.

A variance shall not be granted unless the Commission makes specific findings of fact based directly on the particular evidence presented to it, which support conclusions that the standards and conditions imposed have been met by the applicant.

### Public Hearing and Notice by the Planning Commission

The Commission shall fix a reasonable time for the hearing of the variance or appeal and give due notice thereof to the parties and decide the same within a reasonable time.

The enforcing officer shall give at least fifteen days notice of the time and place of such hearing published in a newspaper of general circulation in the Village describing the particular location and the proposed purposes of the variance or appeal. Such notice shall also be given to all property owners within a distance of 200 feet, streets and alleys included, of the lot for which the variance is proposed.

### Action by Planning Commission

The concurring vote of a majority of the Commission shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant any matter upon which it is required to pass under this ordinance.

SECTION 10. PROCEDURE AND REQUIREMENTS FOR APPROVAL OF CONDITIONAL USE PERMITS

The Commission shall have the authority upon review of particular facts and circumstances to issue a conditional use permit for a specific property.

Standards Applicable to All Conditional Uses

The Commission shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

1. Is in fact a conditional use as established with the provisions for the zoning district involved.
2. Will be harmonious with and in accordance with the general objectives, or with any specific objective of the village zoning ordinance.
3. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or extended character of the general vicinity and that such use will not change the essential character of the same area.
4. Will not be hazardous or disturbing to existing or future neighboring uses.
5. Will be served adequately by essential public facilities and services.
6. Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.
7. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.
8. Will not result in the destruction, loss or damage of a natural, scenic, or historic feature of major importance.

Contents of Application for Conditional Use Permit

An application for conditional use permit shall be filed with the Chairman of the Commission by at least one owner or lessee of property for which such conditional use is proposed. At a minimum, the application shall contain the following information:

1. Name, address and phone number of applicant.
2. Legal description of property.

3. Description of existing use.
4. Zoning district.
5. Description of proposed conditional use.
6. A plan of the proposed site for the conditional use showing the location of all buildings, parking areas, yards, signs and such other information as the Commission may require to determine if the proposed conditional use meets the intent and requirements of this ordinance.
7. A narrative statement evaluating the effects to adjoining property; the effect of such elements as noise, glare, odor, fumes and vibration on adjoining property; and a discussion of the general compatibility with adjacent and other properties in the district.

#### Public Hearing and Notice Requirements

The Commission shall hold a public hearing, publish notice in a newspaper, and give written notice to all the parties in interest according to the same requires as provided for Variance and Appeals.

#### Action by the Planning Commission

The Commission by majority vote shall either approve, approve with supplementary conditions, or disapprove the application as presented.

#### Expiration of Conditional Use Permit

A conditional use permit shall be deemed to authorize only a particular conditional use and said permit shall automatically expire if, for any reason, the conditional use shall cease for more than two (2) years. A property having a conditional use that changes ownership can continue as a conditional use provided that the property has not ceased as a conditional use for more than two (2) years.

#### SECTION 11. PROCEDURE FOR ORDINANCE AMENDMENT OR DISTRICT CHANGE

Whenever the public necessity, convenience, general welfare, or good zoning practices require, village council may by ordinance after receipt of recommendation thereon from the Commission, and subject to procedures provided by law, amend, supplement, change or repeal the regulations, restrictions, and boundaries or classification of property.

#### Initiation of Zoning Amendments

Amendments to this ordinance may be initiated in one of the following ways:

1. By adoption of a motion by the Commission.
2. By adoption of a resolution by Village Council.
3. By the filing of an application by at least one (1) owner or lessee of property within the area proposed to be changed or affected by said amendment.

#### Contents of Application

Applications for amendments to the Official Zoning Map adopted as part of this ordinance shall contain at least the following information:

1. Name, address and phone number of applicant.
2. Proposed amending ordinance, approved as to form by the Village Solicitor.
3. Present use.
4. Present zoning district.
5. Proposed use.
6. Proposed zoning district.
7. A vicinity map at a scale approved by the zoning inspector showing property lines, thoroughfares, existing and proposed zoning and such other items as the zoning inspector may require.
8. A list of all property owners and their mailing addresses who are within, contiguous to, or directly across the street from the parcel, (a) proposed to be rezoned and others that may have a substantial interest in the case except that addresses need not be included where more than ten (10) parcels are to be rezoned.

#### Transmittal to Planning Commission

Immediately after the adoption of a resolution by the Village Council or the filing of an application by at least one (1) owner or lessee of property, said resolution or application shall be transmitted to the Commission.

#### Recommendation by the Planning Commission

1. The Commission shall fix a reasonable time for the hearing of the proposed amendment and give due notice to the parties and decide within a reasonable time and give their report and recommendations to council within thirty days of their consideration.
2. Written notice of the hearing by the Commission shall be given to all property owners within a distance of 200 feet, streets and alleys included, of the land proposed to be rezoned or reclassified.

3. The concurring vote of a majority of the Commission shall be necessary to recommend that the amendment be granted as presented, to recommend modification of the amendment requested, or to recommend that the amendment be denied.

#### Public Hearing and Notice Requirements by Village Council

1. Upon receipt of the recommendation from the Commission, Council shall schedule a public hearing. Notice of the public hearing shall be given by Village Council by at least one (1) publication in one (1) or more newspapers of general circulation in the Village affected. Said motion notice shall be published at least thirty (30) days before the date of the required hearing. The published notice shall set forth the time and place of the public hearing and a summary of the proposed amendment.
2. If the proposed amendment intends to rezone or redistrict ten or less parcels of land as listed on the tax duplicate, written notice of the hearing shall be mailed by the Clerk of Council, by first-class mail, at least twenty (20) days before the day of the public hearing to all owners of property within and contiguous to and directly across the street from such area proposed to be rezoned or reclassified. These property owners shall be taken from the County Auditor's current tax list or the County Treasurer's mailing list, and other list or lists that may be specified by Village Council. The failure to deliver the notification, as provided in this section, shall not invalidate any such amendment. The notice shall contain the same information as required of notices published in newspapers as specified above.

#### Action by the Village Council

Within thirty (30) days after the public hearing, Village Council shall either adopt or deny the recommendation of the Commission or adopt some modification thereof. In the event the Village Council denies or modifies the recommendation of the Commission, it must do so by not less than three-fourths of the full membership of Village Council. No such ordinance shall be passed without at least a concurrence (majority) of the elected officials of the legislative authority.

In the event the proposed amendment is denied by Village Council, the same proposed amendment cannot be resubmitted for one year from date of denial.



SECTION 12. FEES

To partially defray the expenses of advertising, investigating, and considering an appeal, variance, conditional use or amendment or use charge, a fee as established by Ordinance, shall be charged by the enforcing officer, who shall account for the same to the Village of Tontogany.

No fee will be charged if the amendment originates with the Village Council or Commission.

SECTION 13. APPEALS TO COURT

Any person or persons jointly or severally aggrieved by a decision of the Commission or Council may appeal the decision to the Court of Common Pleas of Wood County as provided by the Ohio Revised Code Chapter 2506.

SECTION 14. INTERPRETATION, PURPOSES, CONFLICT

In interpreting and applying the provision of this ordinance, they shall be held to the minimum requirements for the promotion of the public health, safety, morals, comfort, and general welfare. It is not intended by this ordinance to interfere with or abrogate or annul any ordinances, resolutions, rules, regulations, or permits previously adopted or issued, and not in conflict with any of the provisions of this ordinance relative to the use of buildings, structures or land, nor is it intended by this ordinance to interfere with, abrogate or annul any easements, covenants, or other agreements, between parties, provided, however, that whenever this ordinance imposes a greater restriction upon the use of buildings, structures or land, or requires greater building lines, than the provision of this ordinance shall control.

SECTION 15. ENFORCEMENT

1. This ordinance shall be administered and enforced by the Zoning Inspector who is hereby designated the enforcing officer of this ordinance. The enforcing officer will be appointed by the Mayor with the concurrence of Council. The enforcing officer may be removed from office for neglect of duty after a hearing before the Commission and Council. Such removal and filling of vacancy shall be made by resolution of the Village Council.

2. To be eligible for appointment, the Zoning Inspector shall be well informed on the details of the Zoning Code and be able to read and interpret building plans and specifications, surveys and other documents to the extent necessary to fulfill his duties and responsibilities of enforcement. He shall be physically capable of making the necessary examinations and inspections of the building site.
3. It shall be the duty of the Zoning Inspector to enforce all laws relating to the Zoning Code. It shall be the Zoning Inspector's job to consider the construction, alteration, and/or repair of buildings and structures only as it relates to enforcement of the Zoning Code.
4. The Zoning Inspector or a duly appointed assistant shall inspect all buildings or structures in the process of construction as well as the installation on private property of all utilities and other facilities incident thereto, to see that the provisions of law relative to planning and zoning are complied with, to review the application to determine that all requirements are complied with, and to determine the need for conditional use permits or legality of nonconforming uses.
5. The Zoning Inspector shall keep careful and comprehensive records of applications, permits and zoning certificates issued, inspections made, reports rendered, and notices or orders issued. A copy of the Zoning Certificate shall be mailed to the Chairman of the Planning Commission within one (1) week of issuance.
6. Neither the zoning official or any person duly appointed as his assistant, when acting for the Village in discharge of his duties, shall be deemed to render himself personally liable, and he is hereby relieved of all personal liability for any damage that may accrue to persons or property as the result of any such acts performed in the discharge of his duties except intentional tortious conduct. Any suit brought against him because of any act performed by him in good faith or not constituting an intentional tort in the enforcement of any provision of this Zoning Code shall be defended by the Solicitor and if judgment be awarded against him he shall be indemnified and held harmless for all costs including reasonable attorney fees for his defense.

SECTION 16. ZONING CERTIFICATE REQUIRED

1. Zoning Certificate Required. Before proceeding with the erection, relocation or alteration of any building, which activity requires the issuance of a building permit as required in the Building Code, a zoning certificate for such activity shall be first obtained from the Zoning Inspector by the owner or his agent, which certificate in such form as may be prescribed by the Zoning Inspector shall, in substance, certify that such proposed erection, relocation, alteration or other activity complies in all respects with the Zoning Code. No person shall proceed with the erection, relocation, alteration or other activity unless such certificate shall first have been obtained.
2. The fees for issuance of zoning certificates shall be as established by Ordinance. Such fees shall be collected at the time of application for the zoning certificate.
3. Should the Zoning Inspector consider that the work under such permit is proceeding in violation of the provisions of the Zoning Code, it shall be his duty to notify the owner or owners, or his or their agent, in writing, that the work is being constructed in violation of the zoning certificate and the Zoning Code and that the same must be immediately rectified to conform with such zoning certificate and the code and, if necessary, a stop order may be issued. If the owner or owners neglect to comply with such notice or make such correction, the Zoning Inspector may revoke such permit and notice thereof shall be immediately served upon the owner, agent, superintendent or contractor in charge of the work, or upon such other person as it can be reasonably assured would deliver same to the owner. The Zoning Inspector shall also post a copy of said notice on the premises to which the certificate applies. Copies of such notice of revocation shall be delivered forthwith to the Village Solicitor.
4. Any person, firm, company or corporation who violates, disobeys, omits, neglects or refused to comply with, or who resists the enforcement of any of the provisions of this ordinance, or who misrepresents any statement of fact to obtain a permit, shall be subject to a fine of not less than \$5.00 or more than \$200.00 for such offense. That each twenty-four (24) hours that any violation of this continues to exist shall constitute and be a separate offense under terms thereof.

SECTION 17. VALIDITY

Should any section, clause or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not apply or affect the validity of the ordinance as a whole or any part thereof, other than as the part so declared to be invalid.

SECTION 18. REPEALER

All existing zoning ordinances and resolution of the Village of Tontogany, Wood County, Ohio, are hereby repealed.

SECTION 19. EFFECTIVE DATE

This ordinance shall take effect and be in full force and effect from and after the earliest period allowed by law.

Passed: \_\_\_\_\_  
Date

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
Clerk