

ORDINANCE NO. 2016- 69  
INTRODUCED BY: MAYOR TOMKO

3971

**AN ORDINANCE  
AMENDING THE ZONING CODE OF THE VILLAGE OF CHAGRIN  
FALLS AND AMENDING SECTIONS 1111.01, 1111.02(a), (b) AND (c),  
1111.04(d), 1111.05(b), 1111.06, 1111.07, 1111.08, 1111.09 AND 1111.11  
REGARDING REVIEW OF DECISIONS OF THE BOARD OF  
ZONING APPEALS BY THE VILLAGE COUNCIL AND  
PROVIDING FOR USE VARIANCES WHEN AN UNNECESSARY  
HARDSHIP EXISTS.**

WHEREAS, the Planning and Zoning Commission has reviewed and discussed amendments to Chapter 1111 of the Zoning Code regarding appeals to be taken from decisions of the Board of Zoning Appeals; and

WHEREAS, the Charter for the Village of Chagrin Falls has been amended in the General Election of November of 2016 by amending Article IV, Section 8(a) regarding administrative authority, and amending Article VII, Section 5 of the Charter regarding appeals and request for exceptions and variances to the Zoning Code by the Board of Zoning Appeals and as a result of such Charter changes it is necessary to amend Chapter 1111 of the Zoning Code; and

WHEREAS, the Planning Commission on \_\_\_\_\_, 2016 recommended to Council that they amend Sections 1111.01, 1111.02(a), (b) and (c), 1111.04(d), 1111.05(b), 1111.06, 1111.07, 1111.08, 1111.09 and 1111.11 of the Zoning Code of the Village of Chagrin Falls as hereinafter set forth; and

WHEREAS, Council has held a public hearing on \_\_\_\_\_, 20\_\_\_\_ on this Ordinance; and

WHEREAS, Council desires to enact the foregoing amendments to the Zoning Code, based upon the change in the Charter and the recommendations of the Planning and Zoning Commission.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE  
VILLAGE OF CHAGRIN FALLS, CUYAHOGA COUNTY, STATE OF OHIO:**

SECTION 1. Section 1111.01 of the Zoning Code of the Village of Chagrin Falls is hereby amended in its entirety to read as follows:

The Board of Zoning Appeals shall hear any questions or disputes involving the interpretation of provisions of this Zoning Code, which shall be final, unless the matter is referred to the Council as set forth in this Chapter 1111. The Board of Zoning Appeals shall determine whether or not a variance from the strict letter of the Zoning Code should be granted. The Board of Zoning Appeals shall also determine whether decisions of administrative officers, boards or commissions shall be affirmed, reversed or modified on appeal.

SECTION 2. That existing Section 1111.01 of the Zoning Code of the Village of Chagrin Falls, the full text of which follows, is hereby repealed.

The Board of Zoning Appeals shall hear any questions or disputes involving the interpretation of provisions of this Zoning Code. After such hearing, the Board shall recommend to Council whether or not a variance from the strict letter of such Code should be granted. The Board shall also make recommendations to Council whether decisions of administrative officers, boards or commissions should be affirmed, reversed or modified on appeal.

SECTION 3. Section 1111.02(a) of the Zoning Code of the Village of Chagrin Falls is hereby amended in its entirety to read as follows:

(a) To hear appeals of final decisions made by the Administrator, or by any administrative officer, board or commission of the Village, on matters relating to the Zoning Code, or when directed by other provisions contained in the Codified Ordinances of the Village, for relief from any order, requirement, decision or determination, including the grant or refusal to grant a permit, or the revocation of a permit contemplated by this Zoning Code; which decision shall be final unless the matter is referred to the Council pursuant to this Chapter 1111 of the Zoning Code;

SECTION 4. The existing Section 1111.02(a) of the Zoning Code of the Village of Chagrin Falls, the full text of which follows, is hereby repealed:

(a) To hear appeals of final decisions made by the Administrator, or by any administrative officer, board or commission, on matters relating to this Zoning Code, for relief from any order, requirement, decision or determination, including the grant or refusal to grant a permit, or the revocation of a permit; the Board shall then recommend to Council the proper disposition of such appeals by reversal or affirmation, wholly or in

part, or by modification of such order, requirement, decision or determination;

SECTION 5. Section 1111.02(b) of the Zoning Code of the Village of Chagrin Falls is hereby amended in its entirety to read as follows:

(b) To hear and determine applications for variances from the terms provided in the Zoning Code subject to the standards provided in the Zoning Code;

SECTION 6. The existing Section 1111.02(b) of the Zoning Code of the Village of Chagrin Falls, the full text of which follows, is hereby repealed:

(b) To hear and make recommendations to Council upon applications for variances from the terms provided in this Code subject to the standards provided in Sections 1111.07 and 1111.08 of the Codified Ordinances;

SECTION 7. Section 1111.02(c) of the Zoning Code of the Village of Chagrin Falls is hereby amended in its entirety to read as follows:

(c) To hear and determine all matters specifically referred to the Board of Zoning Appeals for determination, such as a determination of district boundary lines or the interpretation of the Zoning Code, when the matter is referred to the Board of Zoning Appeals in the Zoning Code or other provisions of the Codified Ordinances.

SECTION 8. The existing Section 1111.02(c) of the Zoning Code of the Village of Chagrin Falls, the full text of which follows, is hereby repealed:

(c) To hear and make a recommendation to Council on all matters specifically referred to the Board for a recommendation, such as a determination of district boundary lines or the interpretation of the Zoning Code.

SECTION 9. Section 1111.04(d) of the Zoning Code of the Village of Chagrin Falls is hereby amended in its entirety to read as follows:

(d) Decisions and Conclusions of Fact. After the public hearing, the Board shall make its determination which shall include a decision and conclusions of fact. The Board shall also prepare its record in accordance with Section 1111.06 of this Chapter, when the matter will be referred to Council for review of the decision of the Board of Zoning Appeals.

SECTION 10. The existing Section 1111.04(d) of the Zoning Code of the Village of Chagrin Falls, the full text of which follows, is hereby repealed:

(d) Notice to Council of Recommendation. After the public hearing, the Board shall forward its written recommendation to Council, which shall include a proposed Decision and Conclusions of Fact. The Board shall also prepare its record in accordance with Section 1111.06 of this chapter.

SECTION 11. The fifth sentence of Section 1111.05(b) of the Zoning Code of the Village of Chagrin Falls is hereby amended in its entirety to read as follows:

Failure to receive three (3) affirmative votes will constitute a denial of the motion pending before the Board and will result in an affirmance of the prior administrative action being reviewed, or the requested variance(s) will be considered denied.

SECTION 12. The existing fifth sentence of Section 1111.05(b) of the Zoning Code of the Village of Chagrin Falls, the full text of which follows, is hereby repealed:

Failure to receive three affirmative votes will constitute a denial of the motion pending before the Board and result in a recommendation to Council that the prior action should be affirmed, or that the requested variance(s) should be denied.

SECTION 13. Section 1111.06 of the Zoning Code of the Village of Chagrin Falls is hereby amended in its entirety to read as follows:

The Board of Appeals, upon making any decision contemplated by this Chapter 1111, shall have its secretary immediately notify, in writing, the Clerk of Council of such action and notify each member of Council, using the electronic mail address they have provided to the Clerk of Council for receiving notices of Council business, or if none, by personal delivery, of the action taken by the Board of Zoning Appeals. Within fifteen (15) days after receipt of the written notification by the Clerk of Council from the Board of Zoning Appeals, of each decision made by such Board, any three (3) or more members of Council may, in writing, with copies provided to each member of Council at their electronic mail address, or if none by personal delivery, in any form or manner such Council members deem appropriate, request that the Clerk of Council set a public hearing to review the decision of the Board of Zoning Appeals, in which case the Council shall receive testimony, and consider the evidence presented to Council, which shall also include the record to be prepared and provided

by the Board of Zoning Appeals to Council, including their decision and conclusions of fact, and the decision of Council shall be final in regard to any exception, variance, interpretation or review of orders of administrative officials, boards or agencies of the Village, and a majority of Council shall be required to either affirm or reverse the decision of the Board of Zoning Appeals. Notice of the hearing by Council shall be given as provided in the Zoning Code, including to the applicant before the Board of Zoning Appeals that is the subject of the review by Council. If three (3) or more members of Council failed to request a hearing within fifteen (15) days after receipt of notification of the decision of the Board of Zoning Appeals by the Clerk of Council, the decision of the Board of Zoning Appeals shall be final. The notice to be provided by at least three (3) members of Council to have such Board of Zoning Appeals' decision reviewed by Council shall provide the name of the applicant, the address of the property that is the subject of the exception or variance, and which action(s) of the Board of Zoning Appeals will be reviewed by Council. Clerk of Council shall give notice of the hearing of the request for review by the three (3) or more Council members to the applicant, the law director and the secretary of the Board of Zoning Appeals.

SECTION 14. The existing Section 1111.06 of the Zoning Code of the Village of Chagrin Falls, the full text of which follows, is hereby repealed:

The Board of Zoning Appeals shall provide to Council a report of its proceedings, including a draft Decision and Conclusions of Fact, setting forth the reasons for its recommendations to Council, the vote of each member participating therein, and the absence of a member or his or her failure to vote.

SECTION 15. The existing first paragraph of Section 1111.07 of the Zoning Code of the Village of Chagrin Falls is hereby amended in its entirety to read as follows:

The Board of Zoning Appeals, and in the case of a review of the Board of Zoning Appeals' decision by Council, may, in specific cases, vary, modify or waive the application of certain provisions of this Zoning Code, after making findings of fact setting forth the reasons therefor, in order that the public health, safety, convenience, comfort and general welfare may be safeguarded and substantial justice done; provided, that variances shall not be granted for uses not permitted in the zoning district applicable to the property, unless an unnecessary hardship exists that (i) was not self-created, (ii) is due to conditions existing on the property, (iii) the property cannot be used for the purposes for which it is zoned, (iv) will not violate the spirit of the Zoning Code, and (v) results from special conditions

unique to the property being reviewed. Area variances may be granted on the basis of a finding of a practical difficulty. While no single factor controls in the determination of a practical difficulty, the factors to be considered and weighed include, but are not limited to:

SECTION 16. The existing first paragraph of Section 1111.07 of the Zoning Code of the Village of Chagrin Falls, the full text of which follows, is hereby repealed:

Council may, in specific cases, vary, modify or waive the application of certain provisions of this Zoning Code, after making findings of fact setting forth the reasons therefor, in order that the public health, safety, convenience, comfort and general welfare may be safeguarded and substantial justice done; provided, that variances shall not be granted for uses not permitted in the zoning district applicable to the property. Area variances may be recommended to Council on the basis of a finding of a practical difficulty. While no single factor controls in the determination of a practical difficulty, the factors to be considered and weighed include, but are not limited to:

SECTION 17. Section 1111.08 of the Zoning Code of the Village of Chagrin Falls is hereby amended in its entirety to read as follows:

The Board of Zoning Appeals, or in the case of a review of their decision by Council, the Council may permit variations of yard regulations in a residential district for a lot of record, provided the Board of Zoning Appeals, or Council, as the case may be, finds that privacy will not be impaired, and that light and ventilation will be adequate on such lot and not unduly diminished on adjoining lots.

SECTION 18. The existing Section 1111.08 of the Zoning Code of the Village of Chagrin Falls, the full text of which follows, is hereby repealed:

Council may permit variations of yard regulations in a residential district for a lot of record, provided the Council finds that privacy will not be impaired, and that light and ventilation will be adequate on such lot and not unduly diminished on adjoining lots.

SECTION 19. Section 1111.09 of the Zoning Code of the Village of Chagrin Falls is hereby amended in its entirety to read as follows:

The Board of Zoning Appeals, or in the case of a review of their decision by Council, the Council, upon making various determinations, shall endeavor to protect adjoining property, to assure safety of pedestrians and

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convenience of traffic movements within the area in question, and may require the provision of curbs, guard rails, walls, fences or other landscape or protective features, to further the purposes of this Zoning Code.

SECTION 20. The existing Section 1111.09 of the Zoning Code of the Village of Chagrin Falls, the full text of which follows, is hereby repealed:

Council, upon making various determinations, shall endeavor to protect adjoining property, to assure safety of pedestrians and convenience of traffic movements within the area in question, and may require the provision of curbs, guard rails, walls, fences or other landscape or protective features, to further the purposes of this Zoning Code.

SECTION 21. Section 1111.11 of the Zoning Code of the Village of Chagrin Falls is hereby amended in its entirety to read as follows:

When required to review a decision of the Board of Zoning Appeals, when triggered by action taken pursuant to Section 1111.06 of the Zoning Code, each case shall be considered by Council upon the record created by the Board of Zoning Appeals, and as supplemented by the evidence presented by the applicant, the Village or anyone else interested in the proceeding. Council shall apply the laws of the Village to the facts of the case as those facts are contained in the record which was created by the Board of Zoning Appeals or supplemented in the proceedings before Council, where testimony shall be taken under oath and subject to issuance of subpoenas upon request, and such testimony shall be subject to cross examination whether it be presented at the Board of Zoning Appeals or Council. In the event the Council does not follow the decision of the Board of Zoning Appeals, Council shall make its own decision and shall adopt Conclusions of Fact which support its decision and which are found in the record. At any time prior to a final decision of the Board of Zoning Appeals, or Council, the applicant may withdraw the application. Receipt of notice of the withdrawal of an appeal or an application for a variance or exception, at any time prior to final action by the Board of Zoning Appeals, or Council, as the case may be, shall reinstate the prior decision of any administrative officer or body and the appeal or application for a variance or exception shall be treated as though it had not been submitted, except that the applicant will not be entitled to the return of any fees, deposits or costs required in this Zoning Code. After reviewing the Board of Zoning Appeals' decision, Council may affirm, affirm and modify or reverse the decision of the Board of Zoning Appeals by a majority vote of all of its members. Immediately following Council's decision, notice of such decision shall be mailed to the applicant and all interested parties

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who personally appeared before Council to support affirmance or reversal of the decision of the Board of Zoning Appeals. The applicant or any such interested party who was harmed by action of Council may appeal Council's decision pursuant to Ohio R.C. Chapter 2506.

SECTION 22. The existing Section 1111.11 of the Zoning Code of the Village of Chagrin Falls, the full text of which follows, is hereby repealed:

Upon receiving the recommendation of the Board of Zoning Appeals, each case shall be considered by Council upon the record created by the Board. Council shall apply the laws of the Village to the facts of the case as those facts are contained in the record which was created by the Board. In the event the Council does not follow the recommendation of the Board, Council shall make its own decision and shall adopt Conclusions of Fact which support its decision and which are found in the record. At any time prior to a final decision of Council, the applicant may withdraw the application. Receipt of notice of the withdrawal of an appeal or an application for a variance, at any time prior to final action by Council, shall void any prior decision of any administrative officer or body and the appeal or application for a variance shall be treated as though it had not been submitted, except that the applicant will not be entitled to any return of fees or costs required in other sections of this Code. After reviewing the Board's recommendation, Council may affirm, affirm and modify or reverse the recommended decision of the Board of Zoning Appeals by a majority vote of its membership. Immediately following Council's decision, notice of such decision shall be mailed to the applicant and all interested parties. The applicant or any interested party may appeal pursuant to Ohio R.C. Chapter 2506.

SECTION 23. The existing Sections 1111.01, 1111.02(a), (b) and (c), 1111.04(d), 1111.05(b), 1111.06, 1111.07, 1111.08, 1111.09 and 1111.11 of the Zoning Code of the Village of Chagrin Falls, to the extent inconsistent with the newly enacted provisions herein and any other Ordinance in conflict with this Ordinance are hereby repealed.

SECTION 24. That actions of this Council concerning and relating to the passage of this legislation were adopted in lawful meetings of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in compliance with all legal requirements, including Chapter 114 of the Codified Ordinances of the Village of Chagrin Falls.

SECTION 25. That in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls, public notice of this Ordinance shall be given by posting a copy thereof for not less than fifteen (15) days in the Village Hall.



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SECTION 26. That this Ordinance shall take effect and be in force after the earliest period allowed by law and Charter, which shall be no earlier than January 1, 2017.

PASSED: \_\_\_\_\_, 2016

\_\_\_\_\_  
Karl Maersch, Council President

Submitted to the Mayor for  
his approval on this

\_\_\_\_\_ day of \_\_\_\_\_, 2016

Approved by the Mayor

\_\_\_\_\_, 2016

\_\_\_\_\_  
Mayor William Tomko

I hereby certify that Ordinance No. 2016-\_\_ was duly enacted on the \_\_\_\_ day of \_\_\_\_\_, 2016, by the Council of the Village of Chagrin Falls and posted in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls.

\_\_\_\_\_  
Clerk of Council