

Title 02

Administration and
Procedures



Title 02

ADMINISTRATION AND PROCEDURES

SECTION 1102.01 REVIEW AND APPROVALS SUMMARY.

- A. This chapter sets forth the respective powers and duties of the Zoning Administrator, the Board of Zoning and Appeals (hereinafter, “BZA”), the Planning and Zoning Commission (hereinafter, “PZC”), the Heritage Commission (hereinafter, THC) and City Council relative to the administration and enforcement of this Zoning Code

SECTION 1102.02 ZONING ADMINISTRATOR

- A. The Zoning Administrator is the general title assigned to that person who is designated by the Mayor with the responsibility for administering and enforcing this Zoning Code. The Zoning Administrator shall have the authority to delegate his or her duties to certain designees under his or her supervision.
- B. The Zoning Administrator and his or her designees shall have the following responsibilities and powers:
 - (1) Enforce the provisions of this Code and interpret the meaning and application of its provisions.
 - (2) Receive, review and make determinations on applications for zoning certificates.
 - (3) Conduct pre-application meetings with applicants to assist with the review of plans to determine applicable processes and reviews.
 - (4) Issue zoning certificates as provided by this Code and keep a record of same with notations of special conditions involved.
 - (5) Review and process applications pursuant to the provisions of this Code and transmit such applications to the applicable reviewing body or bodies together with reports of the planning and zoning staff.
 - (6) Make determinations as to whether violations of this Code exist, determine the nature and extent thereof, and notify the owner in writing, specifying the exact nature of the violation and the manner in which it shall be corrected by the owner, pursuant to the procedures in this Code.
 - (7) Conduct inspections of buildings and uses of land to determine compliance or non-compliance with this Code.
 - (8) Maintain permanent and current records required by this Code, including but not limited to the Official Zoning Map, Zoning Certificates, inspection documents and records of all variances, amendments and conditional uses. These records shall be made available for use of the City Council, the Planning & Zoning Commission (PZC), the Board of Zoning Appeals (BZA), the Heritage Commission (THC) and the public.

- (9) Determine the existence of any violations of this Code and enforce this Code.
- (10) Revoke a Zoning Certificate or approval issued contrary to this Code based on a false statement or misrepresentation in the application.
- (11) Such other administrative duties as specifically granted to them from time to time by the Director of Public Service.

SECTION 1102.03 BOARD OF ZONING APPEALS (BZA)

- A. Authority. The BZA is authorized to act as the administrative board as provided by the City Charter and shall have the following responsibilities and duties:
 - (1) Hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation or determination made by the Zoning Administrator, a hearing officer, and/or his or her designees.
 - (2) Authorize such variances and exceptions from the terms of this Code as will not be contrary to the public interest in accordance with the procedures set forth under Section 1102.09 hereof unless authorization of the variance and exception is granted by the Planning & Zoning Commission.
 - (3) Appeals taken on the basis of a decision rendered by the Heritage Commission.
 - (4) The BZA does not have the authority to authorize a change in the use of any parcel of land. This authority lies with City Council after recommendation from the Planning & Zoning Commission.
- B. Meetings. The BZA meets monthly and at the call of its chairperson or two other members, and at such other regular times as it may, by rule determine.
- C. Quorum. The BZA shall require a quorum of three members at all its meetings, and a concurring vote of three members shall be necessary to affect an order.
- D. Witnesses. The BZA Chairperson or acting Chairperson may administer oaths and compel the attendance of witnesses in all matters coming before the Board.

SECTION 1102.04 PLANNING AND ZONING COMMISSION (PZC)

- A. Authority. The PZC is authorized to act as the administrative board as provided by the City Charter. It shall have the responsibilities as set forth in the City Charter, including but not limited to the following responsibilities and powers as they relate to this Zoning Code here and elsewhere:
 - (1) Initiate advisable Official Zoning District Map changes, or changes in the text of the Code where same will promote the best interest of the public in general through recommendation to the City Council.
 - (2) Review all proposed amendments to the text of this Code and the Official Zoning District Map and make recommendations to the City Council.
 - (3) Carry on a continuous review of the effectiveness and appropriateness of this Code and recommend such changes or amendments as it feels would be appropriate.
 - (4) Review and act on site plan applications and requisite documents.
 - (5) Review all applications for Conditional Uses and make recommendations to Council.

- B. Meetings. The PZC meets monthly and at the call of its chairperson or two other members, and at such other regular times as it may, by rule determine.
- C. Quorum. The PZC shall require a quorum of three members at all its meetings, and a concurring vote of three members shall be necessary to affect an order.
- D. Witnesses. The PZC Chairperson or acting Chairperson may administer oaths and compel the attendance of witnesses in all matters coming before the Commission.

SECTION 1102.05 HERITAGE COMMISSION (THC)

- A. Authority. The THC is authorized to act as the administrative board as provided by the City Charter, in addition to the following duties which may be amended from time to time by Council: To review applications for Certificates of Appropriateness (COA) in accordance with the procedures set forth under Chapter 1109.06 of this Code.
 - (1) To review applications for Certificates of Appropriateness (COA) in accordance with the procedures set forth under Chapter 1109.06 of this Code.
 - (2) To review applications for the designation of structures as Recognized Heritage Structures (RHS) in accordance with the procedures set forth under Chapter 1109 of this Code.
 - (3) To review applications for the removal of structures as Recognized Heritage Structures (RHS) in accordance with the procedures set forth under Chapter 1109 of this Code.
 - (4) To promulgate, along with the City Administration, supplemental material, including illustrations, in the Design Control Overlay District Review Guidebook and other documents that further interpret the provisions of this Chapter and Chapter 1103.
- B. Meetings. The THC meets monthly and at the call of its chairperson or two other members, and at such other regular times as it may, by rule determine.
- C. Quorum. The THC shall require a quorum of three members at all its meetings, and a concurring vote of three (3) members of the Heritage Commission shall be necessary to affect an order.
- D. Witnesses. The THC Chairperson or acting Chairperson may administer oaths and compel the attendance of witnesses in all matters coming before the Commission.

SECTION 1102.06 CITY COUNCIL

- A. Authority. Council may, from time to time, amend by ordinance the number, shape or area of districts established on the Zoning Map or the regulations set forth in this Zoning Code, schedule of fees and act on matters of land use based on the recommendations of the PZC.

SECTION 1102.07 APPLICATIONS

- A. Applicability. Any person desiring to do or to cause to be done any work for which a permit or zoning certificate is required by this Zoning Code, shall obtain a permit with the Planning & Zoning Department and at the time of application pay all required fees as established by the Schedule of Fees and comply with all requirements as set forth by this Zoning Code and Summit County Department of Building Standards.

- B. The applicant must own in fee simple or have an option to purchase all lands within the proposed application. The exception to this is if the applicant is the authorized agent for the property owner, in which case, the applicant need not own the lands. The owner in fee simple must sign and acknowledge the application.
- C. Any transfer of land within the development resulting in a change of ownership within the development after an application has been filed shall not alter the applicability of the regulations contained herein provided any new owners authorize the continuation of the application process.
- D. Pre-Application Meeting. Prior to filing an application, an applicant may request a pre-application meeting with the Zoning Administrator to discuss the proposed application or project. The Zoning Administrator may require a pre-application meeting in certain circumstances outlined herein.
 - (1) The purpose of the pre-application meeting shall be to discuss the proposed application or project, review submittal requirements and discuss compliance with the provisions of this code and the adopted plans of the city prior to the submission of the application.
 - (2) No action can be taken by the staff and/or boards until the applicant submits an actual application and/or plan to the city pursuant to the laws and policies of the city. Therefore, all discussions that occur between the applicant and/or applicant's representative(s) and staff, and/or City boards, that occur prior to the date the applicant submits an actual application and/or plan including, but not limited to, any informal meetings with City staff, boards, any pre-application conferences or meetings, are not binding on the City and do not constitute official assurances or representations by the City or its officials regarding any aspects of the plan or application discussed.
- E. Application. Any application, unless otherwise stated, submitted hereunder shall include at minimum the following information and will conform to the requirements set forth on the applicable application:
 - (1) All requests for a decision or approval under this Code begin with the property owner or authorized agent thereof filing an application with the Zoning Administrator on forms provided.
 - (2) The present zoning district for the subject property.
 - (3) A complete application shall include requisite number of copies, supported documents and materials and payment in full of all applicable fees per the Schedule of Fees.
 - (4) The Zoning Administrator will determine whether an application is complete and is ready to be processed. The Zoning Administrator may waive certain submission requirements where it is determined that it is not applicable to include an application on the agenda, contingent on any public hearing requirements. In some instances, an additional application may be deemed necessary by the Zoning Administrator and, if so, an application will not be deemed to be complete unless and until all applications are submitted and reviewed and determined to be in accordance with all submittal requirements. The applicant will be notified in writing of any deficiencies in the completeness of the application and shall have 30 days from the date thereof to complete the application or the application will be deemed null and void. No official action shall take place until the application is deemed full and complete by the Zoning Administrator.
 - (5) Unless otherwise prescribed by this Code or requested by the applicant, the applicable decision-making body or administrator shall render a decision on all full and complete applications within sixty-five (65) days from the original hearing.
 - i. In the interest of timely and efficient administration of the provisions of this Code, applicants may submit, and the Board may take action upon, concurrent applications for conditional uses, similar use determinations, variances, and other matters on which the Board is granted authority by this

Code. All such concurrent applications shall be submitted in conformance with the applicable provisions of this Code. The Board shall not take such concurrent action if it determines that such concurrent action is not in the best interest of the city.

- F. General Notice. When an application calls for a public hearing, a notice of the hearing shall be made to the public by twenty (20) days advance publication, in a newspaper of general circulation in the City, of the place, time, date and the nature of the application.
- G. Notice to Parties of Interest. When an application calls for a public hearing, written notice of such hearing shall be mailed by first class mail at least fourteen (14) days before the date of the hearing to all property owners located in the City within five hundred (500) feet in any direction of the property upon which an application has been filed. The failure to mail or deliver notification as provided in this Code shall not invalidate any such application. The notice shall contain the same information as required of notices published in newspapers.
- H. Expiration. The approval shall become void at the expiration of one year after date of issuance, unless construction is started. If no construction is started or use changed within one year of date of permit, a new permit is required upon proper application unless the applicant applies for an extension by the approving body/bodies. One extension may be granted for up to twelve (12) months. Any application for extension must be made in writing to the approving body/bodies prior to the expiration of the initial Certificate.
 - (1) Any building or structure for which a permit has been issued, and except for circumstances beyond the property owner's control (e.g. labor strikes, inclement weather, etc.), all construction work shall be diligently pursued to completion. Any construction project, upon which no substantial work has been undertaken for a period of six months, shall be deemed abandoned and the applicable permit shall be deemed void. For the purposes of this subsection, "substantial work" shall mean any portion of permitted work that requires a city inspection. Such work will be considered as having begun if the city has received an inspection request, or if a city inspector has verified that such work has begun.
 - (2) The construction project cannot create nuisance conditions such as property maintenance violations or any other violation of the codified ordinances.
 - (3) The breach of any condition, safeguard or requirement shall automatically invalidate the certificate or permit granted and shall constitute a violation of the Zoning Ordinance.
- I. Reapplication. No application, which has been denied by the applicable body, shall be resubmitted until the expiration of one year or more from the date of such denial, except on grounds of newly discovered evidence or proof of changed conditions which would be sufficient to justify reconsideration, which shall be determined by the Director of Law.
- J. Conduct of Public Meetings and Hearings.
 - (1) Rights of All Persons
 - i. Any person may appear at a public hearing and submit information or evidence, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall be identified, state his or her address, and if appearing on behalf of a person or organization, state the name and mailing address of the person or organization being represented.
 - (2) Continuance of a Public Meeting or Hearing, or Deferral of Application Review
 - i. An applicant may request that a review or decision-making body's consideration of an application at a public hearing be deferred by submitting a written request for deferral to the Zoning Administrator prior to the publication of notice as may be required by this code. The Zoning

Administrator may grant such requests, in which case, the application will be considered at the next regularly scheduled meeting.

- ii. A request for continuance of consideration of an application received by the Zoning Administrator after publication of notice of the public hearing as required by this code shall be considered as a request for a continuance of the public hearing and may only be granted by the decision-making body.
- iii. The review or decision-making body conducting the public hearing may, on its own motion or at the request of the applicant, continue the public hearing to a fixed date, time, and place. No additional notice is required if the fixed date, time, and place is announced at the time of the continuance.

(3) Tabling or Continuation of Public Meetings or Hearings

- i. If any review procedure is tabled or continued by the applicant for a period exceeding 6 months, the application shall be deemed as void and the applicant shall be required to resubmit an application.

K. Withdrawal of Application. Any request for withdrawal of an application shall be either submitted in writing to the Zoning Administrator or verbally to the decision-making body prior to action by decision-making body.

- (1) The Zoning Administrator shall approve a request for withdrawal of an application if it has been submitted prior to publication of notice for the public hearing on the application in accordance with this code.
- (2) If the request for withdrawal of an application is submitted after publication of notice for the public hearing in accordance with this code, the request for withdrawal shall be reported on the public hearing agenda and posted. Such action shall not be deemed as a decision on the subject application.

L. Effects of any Approvals.

- (1) The issuance of any approval, certificate or permit under this code shall authorize only the particular development, alteration, construction or use approved in the subject application.
- (2) All approvals shall run with the land or use and shall not be affected by change in ownership.
 - i. Development authorized by any approval under this section and this code shall not be carried out until the applicant has secured all other approvals required by this code or any other applicable provisions of the City.
 - ii. The granting of any approval, certificate or permit shall not guarantee the approval of any other required certificate, permit or application.
 - iii. The City shall not be responsible for reviewing the application for compliance with any permits, certificates, or other approvals that may be required by the County, State, or other agencies having jurisdiction.

M. Computation of Time.

- (1) In computing any period of time prescribed or allowed by this code, the date of the application, act, decision or event, from which the designated period of time begins shall not be included. The last date of the period of time to be computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which case the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday as observed by the City where the City administrative offices are closed for the entire day.
- (2) When the City offices are closed to the public for the entire day which constitutes the last day of the period of time, then such application, act, decision, or event may be performed on the next succeeding

day which is not a Saturday, a Sunday or a legal holiday observed by the City in which the City administrative offices are closed for the entire day.

SECTION 1102.08 FEES AND GUARANTEES

- A. Fees. City Council shall, by Ordinance, establish a schedule of fees for applications for zoning certificates, amendments, appeals, variances, conditional zoning certificates, site plan approvals, similar permitted uses, certificates of appropriateness, minor modification of a use or site plan of an approved conditional use, and other procedures and services pertaining to the administration and enforcement of this Zoning Code, after considering the recommendations of the Zoning Administrator with respect to actual administrative costs, both direct and indirect.
- (1) The schedule of fees shall be available in the office of the Zoning Administrator and may be altered or amended only by the City Council. Until all such appropriate fees, charges and expenses have been paid in full, no action shall be taken on any application, appeal or administrative procedure.
 - (2) Such fees are adopted to cover the cost to the City for investigations, legal advertising, postage and other expenses resulting from the administration of the respective zoning activities.
 - (3) Any consultant and professional service fees required for the review of the application are the responsibility of the applicant and shall be collected prior to any reviews. The funds will be held in escrow by the City and disbursed as the City is billed for the services. Any unused fees will be returned to the applicant upon completion of the review.
 - (4) Unless otherwise identified in the fee schedule adopted by City Council, no application shall be processed or determined to be complete until the established fee has been paid.
 - (5) Application fees are not refundable except where the Zoning Administrator determines that an application was accepted in error, or the fee paid exceeds the amount due, in which case the amount of the overpayment will be refunded to the applicant.
- B. Types of Guarantees The following are the types of financial guarantees allowed by the City. The standards for each type of guarantee shall apply to any situation where a financial guarantee is required.
- (1) Bond: The following standards shall apply if a bond is utilized as a financial guarantee:
 - i. A bond in the amount of the guarantee determined by the City shall be filed with the City of Tallmadge.
 - ii. The bond may be in the form of a surety bond or a cash bond of the kind approved by law for securing deposits of public money.
 - iii. The bond shall be executed by the principal, and if a surety bond, shall be executed by a corporation authorized to act as a surety under the laws of the State of Ohio.
 - (2) Irrevocable Letter of Credit: The following standards shall apply if an irrevocable letter of credit is utilized as a financial guarantee:
 - i. The subdivider shall provide an irrevocable letter of credit from a bank or other reputable institution or individual subject to the approval of the City Law Director and Mayor.
 - ii. The letter shall be deposited with the City, and shall certify the following:
 - (a) The creditor guarantees funds in the amount determined by the City for completion of all required public improvements.

- (b) In the case of failure on the part of the subdivider to complete the specified public improvements within the required time period, the creditor shall pay to the City immediately and without further action such funds as are necessary to finance the completion of those public improvements, up to the limit of credit stated in the letter.
 - (c) This irrevocable letter of credit may not be withdrawn or reduced in amount until released by the Director of Public Service in accordance with this chapter.
- (3) Cash: The following standards shall apply if cash is utilized as a financial guarantee:
- i. The subdivider shall provide a certified check in the amount of the guarantee as determined by the City, payable to the City of Tallmadge.
 - ii. When the public improvements are complete, the City shall issue a check for the released amount based on this subsection.
 - iii. The City shall not be responsible for paying interest for the period of time the City retains the guarantee.

SECTION 1102.09 ZONING CERTIFICATES

Zoning certificates shall be administratively approved in accordance with this Section and in accordance with this Zoning Code.

- A. **Applicability.** No use of land, building or structure and no construction or alteration of an existing use, building, or structure shall commence until a zoning certificate is issued by the Zoning Administrator certifying that the intended use of the premises has been documented, reviewed, and approved in conformance with the provisions of this Zoning Code. A zoning certificate shall only be issued by the Zoning Administrator subsequent to completion of all procedures and approvals required by this Code.
- B. The Summit County Department of Building Standards shall not issue a Building Permit for any structure until the required Zoning Certificate has been approved by the City.
- C. It shall be the duty of each lot owner and contractor, or an agent thereof, to determine lot lines and to ascertain that the new construction or alteration does not deviate from the plans as approved by the Zoning Administrator issuing the zoning certificate, and that the new construction or alteration does not encroach on another lot or existing easement. The issuance of the certificate and any inspection by the City shall not be construed to mean that the City has determined the new construction or alteration is not encroaching on another lot, nor shall it relieve the property owner of the duty imposed on him or her herein.
- D. Any zoning certificate based on any false material or statement in the application or supporting documents is absolutely void, from the beginning and shall be revoked.
- E. Except as otherwise provided in this Code, a zoning certificate shall be required before:
 - (1) Locating, erecting, constructing, reconstructing, altering, or moving any building or structure, including an accessory building or structure such as a sign or fence;
 - (2) Occupying or using land or a building, or changing the use of land or of a building, in whole or in part, for a different use;
 - (3) Changing a nonconforming use to a different use or extending or expanding a nonconforming use or structure; or

- (4) Unless otherwise specifically exempted in Chapter 1108 Signage, signs shall require a zoning certificate.
- F. Standards for Review. Within fourteen (14) days of the submission of a completed application, the Zoning Administrator may deny the application and may not issue a zoning certificate or may extend the time for review at the Zoning Administrator's discretion. In order to approve any zoning certificate, the Zoning Administrator shall determine the following:
 - (1) The application complies with all applicable provisions of this code and the applicable zoning district; and
 - (2) The application complies with all approved plans, conditions or other development approvals issued pursuant to the rules of this code (e.g., variances, conditional uses, Heritage Commission approvals, etc.)
- G. Within fourteen (14) days of the Zoning Administrator's denial of a zoning certificate, the applicant may file a written appeal with the BZA. Any applicant who does not file an appeal within fourteen (14) days of the date of denial by the Zoning Administrator shall have waived such right to appeal, and the decision of the Zoning Administrator shall become final.

SECTION 1102.10 ZONING VARIANCES

- A. Applicability. When practical difficulties, unnecessary hardship or results inconsistent with the general purpose of this Zoning Code result through the strict and literal interpretation and enforcement of the provisions hereof, the BZA shall have authority, as an administrative act, subject to the provisions of this section, to grant, upon such conditions as it may determine, such variances from the provisions of this Zoning Code as may be in harmony with its general purpose and intent, so that the spirit of this Zoning Code shall be observed, public safety and welfare secured and substantial justice done. To facilitate the efficient review of site plan and development applications, the PZC shall be permitted to review requests for variances/modifications in accordance with the standards set forth herein.
- B. Standards for Granting Variance. In every instance of granting a variance by the BZA, the BZA must determine based on the facts presented that
 - (1) The strict application of the provisions of this Zoning Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of this Zoning Code.
 - (2) There are exceptional or extraordinary circumstances or conditions applying to the property involved or development of the property that do not apply generally to other properties in the same zoning district or neighborhood.
 - (3) The granting of such variance will not be of substantial detriment to the public interest or to the property or improvements in such district in which the variance is sought and will not materially impair the purpose of this Zoning Code.
- C. Conditions on Granting of Variance. In granting any variance, the BZA/PZC shall establish such conditions as are necessary to secure substantially the objectives of this Code. Any violation of such conditions and safeguards, when they have been made a part of the terms under which the variance has been granted, shall be deemed a violation of this Code.
- D. Term of Variance. No action of the BZA/PZC granting a variance shall be valid for a period longer than twelve (12) months from the date of such action unless the zoning certificate is obtained within such period, and the erection or alteration of a structure is started or the use is commenced within such period.

SECTION 1102.11 SITE PLAN REVIEW

- A. Applicability. This section shall apply to applications for conditional uses, similar use determinations, new construction, “substantial expansion” of existing structures and expansion of parking lots. These regulations shall not apply to one, two or three family dwellings when site plan review is not otherwise required under the subdivision regulations. For the purposes of this section “substantial expansion” shall mean an increase of twenty-five (25%) or more of the built footprint of the principal structure.
- B. Site Plan Review Standards. The following principles shall guide the exercise of site planning review by the PZC:
- (1) The natural topographic and landscape features of the site shall be incorporated into the plan and the development.
 - (2) Buildings and open spaces should be in proportion and in scale with existing structures and spaces in the area within three hundred (300) feet of the development site.
 - (3) A site that has an appearance of being congested, over built or cluttered can evolve into a blighting influence and therefore such should not be congested, over built or cluttered.
 - (4) Open spaces should be linked together.
 - (5) Natural separation should be preserved or created on the site by careful planning of the streets and clustering of buildings using natural features and open spaces for separation. Existing vegetation removal should be kept to a minimum.
 - (6) Screening of intensive uses should be provided by utilizing landscaping, fences or walls to enclose internal areas.
 - (7) Buildings should be sited in an orderly, non-random fashion. Long, unbroken building façades should be avoided.
 - (8) In connection with the siting of multiple story buildings, the location should be oriented to maximize the privacy of the occupants of adjacent buildings.
 - (9) Pedestrian circulation in non-residential areas should be arranged so that off-street parking areas are located within a convenient walking distance of the use being served. Handicapped parking should be located as near as possible to be accessible to the structure. Pedestrian and vehicular circulation should be separated as much as possible, through crosswalks designated by pavement markings, signalization or complete grade separation.
 - (10) Path and sidewalk street crossings should be located where there is a good sight distance along the road, preferably away from sharp bends or sudden changes in grade.
 - (11) Parking lots and garages should be located in such a way as to provide safe, convenient ingress and egress. Whenever possible there should be a sharing of curb cuts of more than one facility. Parking areas should be screened and landscaped, and traffic islands should be provided to protect circulating vehicles and to break up the monotony of continuously paved areas.
 - (12) When located in an overlay, building placement, parking location, and site layout must comply with the regulations of the underlying overlay district.
 - (13) Drive through establishments such as restaurants and banks should be located to allow enough automobile waiting space for peak hour operation without interference with other parking lot circulations.

- C. Modification to Approved Site Plan. The Zoning Administrator may approve a minor modification to any previously approved site plan with notice to the PZC of such minor modification. For the purposes of this subsection “minor modification” shall mean any modification that is in substantial agreement with the PZC’s prior approval of the site plan. Such minor modification shall require a Commercial Zoning Certificate. If the Zoning Administrator determines that a proposed modification is not a “minor modification” then such modification shall be heard by the PZC in accordance with the standards for an application for initial site plan approval. Notwithstanding anything to the contrary contained herein, the Zoning Administrator may refer any application for a modification to the PZC for review. For the purposes of this subsection (C) “substantial agreement” shall mean any modification that proposes to alter a dimensional standard by ten percent (10%) or less from the dimensional standard that was approved under the original site plan.
- D. Action by PZC. The PZC shall act upon all site plans within thirty-five (35) days after the receipt of the complete application from the Zoning Administrator. The PZC may approve, disapprove or approve with modifications the site plan as submitted. The PZC may extend the time for review with the consent of the applicant.

SECTION 1102.12 CONDITIONAL USES

- A. Applicability. Reviews of applications for conditional uses shall be conducted by the PZC in accordance with the provisions set forth under this section. The intent of the procedure for authorizing a conditional use is to set forth the development standards and criteria for locating and developing conditional uses in harmony with the character of the surrounding area, conditions of development and with regard to appropriate laws.
- B. Conditional Uses Review Standards. Upon reviewing an application for a conditional use, the PZC shall consider whether the application provides adequate evidence that the proposed conditional use is consistent with the applicable conditions as set forth in Chapter 1104: Use Regulations and the following standards, as applicable to the subject property. Not all criteria may be applicable in each case, and each case shall be determined on its own facts.
 - (1) The proposed use shall be in harmony with the existing or intended character of the zone or district and nearby affected zones and districts and shall not change the essential character of the zones and districts;
 - (2) The proposed use shall not adversely affect the use of adjacent property;
 - (3) The proposed use shall not adversely affect the health, safety, morals, or welfare of persons residing or working in the neighborhood;
 - (4) The proposed use shall be served adequately by public facilities and services such as, but not limited to, roads, police and fire protection, storm water facilities, water, sanitary sewer and schools;
 - (5) The proposed use shall not impose a traffic impact upon the public right-of-way significantly different from that anticipated from permitted uses of the zone or district;
 - (6) The proposed use shall be in accord with the general and specific objectives, and the purpose and intent of this Zoning Code compatible with the guiding plan documents and ordinances of the City; and/or
 - (7) The proposed use shall be found to meet the definition and intent of a use specifically listed as a conditional use in the zone or district in which the subject property is situated.
- C. The City of Tallmadge shall be exempt from the conditional use provisions of this Code, however may, from time to time, utilize the application process.

D. Application and Review Procedure

- (1) STEP 1: Submittal of conditional use application to the Planning & Zoning Department
 - i. The applicant submits the application and fees with applicable documents as established by the Zoning Administrator.
- (2) STEP 2: Staff Review and Transmission to the PZC
 - i. Upon determination that a conditional use application is complete, the Zoning Administrator shall distribute the application to all appropriate City departments and professional consultants for review and comment. Any comments or expert opinions shall be returned to the Zoning Administrator for transmission to the PZC.
 - ii. The Zoning Administrator shall report on the Agenda of the 1st meeting the filing of a request for the Conditional Use. If no other items are listed on the agenda for consideration, the agenda will be posted.
 - iii. The Zoning Administrator shall distribute the application and any reports prepared as part of Subsection b. above, at least three business days prior to the PZC's meeting where the application is to be reviewed.
 - iv. The Zoning Administrator shall make written notice of the public meeting before PZC by first class mail at least fourteen (14) days before the date of the meeting to all property owners located in the City within five hundred (500) feet in any direction of the property upon which the application has been filed.
 - v. Notice shall also be made by sign posting on the property indicating a conditional use request and website for information. Where a zoning change involves ten (10) or more parcels, a sign posting will be exempt.
- (3) STEP 3: PZC Review and Recommendation
 - i. The PZC shall review the application and hold a public hearing in accordance with the procedures established in Section 1102.07. Within 65 days, PZC shall make a recommendation on the application to City Council:
 - (a) Approval of the conditional use,
 - (b) Approval of the conditional use subject to specific conditions not included in the plan as submitted, or
 - (c) Denial of the conditional use.
 - ii. If PZC fails to make a recommendation within the established timeframe, the application will move forward to STEP 4 with a recommendation of denial.
 - iii. In reviewing the application, the PZC shall at a minimum, consider the reports and opinions transmitted by the Zoning Administrator and the review criteria of this section.
 - iv. At least four (4) affirmative votes shall be required of PZC members to recommend changing any property zoned residential to commercial, industrial or conditional-use classification per the Charter.
 - v. All recommendations shall also be forwarded to the applicant, as applicable.
 - vi. City Council shall be forwarded the recommendations from PZC. Such recommendations may be modified by the Director of Law as to grammar and form but not as to substance.
 - vii. The PZC shall also have the authority to review and grant the minor modification of a use or site plan of an approved conditional use.

- (4) STEP 4: City Council Review and Decision
 - i. Council, within forty-five (45) days of its receipt of the recommendation of the PZC shall approve, deny, modify, or approve with conditions the application.
 - ii. If Council action is in accordance with the recommendation of the PZC, a majority vote of Council is needed for enactment.
 - iii. If Council substantially departs from, substantially alters, or differs from the recommendation of the PZC, no such ordinance, measure or resolution shall take effect unless approved and passed by five (5) votes of the membership of the Council.
- (5) STEP 5 Zoning Certificates and Building Permits
 - i. Following the approval of the conditional use, the applicant may proceed with the zoning certificate and building permit process, consistent with this code and approval as granted, including any conditions and modifications made by the PZC.
 - ii. All construction and development under any building permit shall be in accordance with this code and any related approved Site Plan/Final Development Plan, except as may be permitted in Section 1102.14 E Compliance and Modifications of Approved Plans. Any unauthorized departure from such plan shall be cause for revocation of the zoning certificate.

SECTION 1102.13 SIMILAR USE DETERMINATION

- A. Applicability. When an application for a zoning certificate is submitted for a use which, in the opinion of the Zoning Administrator, is not listed as a permitted use or a conditional use in any district or zone, then the Zoning Administrator shall refuse to issue a zoning certificate, and the applicant may thereafter resubmit an application for a similar use determination to the Zoning Administrator to be heard by the PZC.
- B. Similar Use Determination Review Standards. In addition to the other regulations and standards applicable to conditional use permits, the following standards shall be considered by the PZC when making a determination that a use is substantially similar to a permitted or a conditionally permitted use within a specific district:
 - (1) The nature, predominant characteristics and intensity of the proposed uses in relation to those uses specified by this Code as being permitted, or in the case of a conditional use conditionally permitted, in that district.
 - (2) The size, dimensional requirements, parking requirements, traffic generation potential and other regulatory considerations normally associated with uses as specified in this Code.
- C. When a proposed land use is not explicitly listed in Table 1104.05, the Zoning Administrator shall determine whether it is reasonably included in the definition of a listed use, or that the proposed use meets the following criteria to the extent that it should be treated as a permitted or conditional use in the district.
 - (1) The use is not specifically listed in any other zoning district.
 - (2) The use is generally consistent with the intent of the zoning district and this chapter.
 - (3) The use will not materially impair the present or potential use of other properties within the same district or bordering districts.
 - (4) The use has no greater potential impact on surrounding properties than those listed in the district in terms of aesthetics, traffic generated, noise, potential nuisances and other impacts related to health, safety and welfare.

- (5) The use will not adversely affect the relevant elements of the Comprehensive Plan.
- D. The Zoning Administrator's written determination shall be provided to the applicant and may be appealed to the PZC. If the Zoning Administrator determines that it is a similar permitted use, a Zoning Certificate can be issued, and it shall be reported to the PZC. If the Zoning Administrator determines that it is a similar conditional use, it shall be pursued as a Conditional Use per Section 1102.11.
- E. Hearing Procedures. Any appeal for an application for a similar use determination shall be heard by the PZC in accordance with the procedures applicable to an application for a conditional use.

SECTION 1102.14 ZONING MAP AMENDMENTS.

A. Applicability of a Rezoning

- (1) Amendments to the Zoning Map may be initiated in one of the following ways:
 - i. By adoption of a motion by PZC;
 - ii. By adoption of a motion by Council for PZC recommendation;
 - iii. By application with consent of the property owner of record.
- (2) The Zoning Administrator shall review the application for completion and forward the complete application to the Clerk of Council.

B. Amendment to Zoning Map Review Standards

- (1) The PZC and City Council shall consider whether the application provides adequate evidence that the proposed district change is consistent with the applicable standards as listed. Not all criteria may be applicable in each case, and each case shall be determined on its own facts.
 - i. The proposed amendment is consistent with the adopted City plans, and the stated purposes of this code;
 - ii. The proposed amendment is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions;
 - iii. The proposed amendment will promote the public health, safety, and general welfare;
 - iv. The uses that would be permitted on the property if it were reclassified would be compatible with the uses permitted on other property in the immediate vicinity;
 - v. The proposed amendment follows lot lines or the centerlines of streets, railroads, or other rights-of-way;
 - vi. Adequate utility, sewer, and water facilities, and all other needed public services exist or can be provided to serve the uses that would be permitted on a property if it were reclassified;
 - vii. The proposed amendment is not likely to result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts will be substantially mitigated;
 - viii. The proposed amendment will not constitute an instance where special treatment is given to a particular property or property owner that would not be applicable to a similar property, under the same circumstances;
 - ix. The proposed amendment is not likely to result in significant adverse impacts upon other property in the vicinity of the subject tract;

- x. The proposed amendment would correct an error in the application of this Planning and Zoning Code as applied to the subject property; and
 - xi. The General Development Plan meets the standards set forth in the application as determined by the Zoning Administrator.
- (2) The PZC shall not recommend the adoption of a proposed amendment unless it finds that the adoption of such an amendment is in the public interest and not solely for the interest of the applicant.

C. General Development Plan Review Standards

- (1) PZC and Council shall only approve a General or Final Development Plan when it is determined to be in compliance with the following criteria:
- i. Each part of the development can exist as an independent unit capable of creating an environment of sustained desirability and stability or that adequate assurance will be provided that such objective will be attained.
 - ii. The existing and proposed streets and thoroughfares are suitable and adequate to carry anticipated traffic; the project will not generate traffic in such amounts as to overload the street network outside the District; and adequate traffic control measures (i.e. turning lanes and/or signals/signs) are provided at the intersection of the project's entry roads with the existing public street. Traffic control measures may include the reservation of land for future road widening adjacent to existing public rights-of-way.
 - iii. The development will result in a harmonious grouping of buildings so that the area surrounding said development can be developed in a manner that is substantially compatible with the proposed development.
 - iv. Maximum possible privacy for adjacent residential properties shall be provided through good design and use of proper landscaping according to the Chapter.
 - v. Adequate provisions are made in the final covenants and restrictions relating to the use and development of accessory buildings and structures (fences, pools, play equipment, etc.) associated with individual dwelling units; and
 - vi. On-site circulation shall be designed to provide for adequate fire and police protection, and safe and efficient pedestrian and vehicular circulation.
 - vii. The proposed development complies with all other applicable provisions of this Chapter and any other applicable standards as set forth by the Zoning Administrator.

D. Amendment to Zoning Map Review Procedures

- (1) To achieve conformance with the standards listed above, a review process has been established that combines the request for a zoning amendment with a concurrent development plan review. Therefore:
- i. Each approved application shall be considered a separate and unique zoning district wherein a General Development Plan, including associated text, depicting the specific development standards and development commitments, is adopted simultaneously with the adoption of the zoning map amendment.
 - ii. The General Development Plan adopted at the time of rezoning shall be prepared in accordance with the provisions and shall take precedence over any conflicting regulations contained in the Zoning Code.

- iii. A preliminary subdivision plat or a site plan, whichever is applicable, may be reviewed simultaneously with a General Development Plan. In cases of a major subdivision, the final subdivision plat may be reviewed simultaneously with a Final Development Plan. All subdivision plats shall be reviewed and approved according to Section 1110.03 Major Subdivision.
- (2) Ownership. The application shall be an integrated, unified development project and the entire project area shall be in single ownership or joint ownership and/or control at the time the application is made for the District designation so that all property owners are applicants. Any transfer of ownership for any portion of the land within the development resulting in ownership by two or more parties, after an application has been filed, shall not alter the applicability of the regulations contained herein. A General Development Plan approved in accordance with these regulations shall be binding upon the owners, their successors, and assigns.
- (3) Application and Review Procedure
 - i. STEP 1: Pre-application meeting with concept plan.
 - (a) The applicant shall meet with the Zoning Administrator and appropriate staff for review of a concept plan prior to submitting an application for a zoning amendment.
 - (b) The concept plan is intended to outline the basic scope, character and nature of a proposed project. The review is to provide input in the formative stages of design.
 - ii. STEP 2: (optional) Concept discussion with PZC
 - (a) The applicant may request review and feedback from PZC prior to preparing a General Development Plan.
 - (b) No discussions, opinions, or suggestions provided on any aspect of the concept plan shall bind the applicant, or the city, or be relied upon by the applicant to indicate subsequent approval or disapproval by the city.
 - iii. STEP 3: Submittal of Amendment to Zoning Map to the Planning & Zoning Department
 - (a) The applicant submits the application and fees with applicable documents. Applicable documents must at the least include the General Development Plan based on the content established by the Zoning Administrator
 - (b) As determined by the Zoning Administrator, plans including but not limited to a Preliminary Plat/Site Plan may be submitted and reviewed concurrently with General Development Plan.
 - 1) If no such Preliminary Plat/Site Plan is submitted simultaneously, a separate filing for these is required prior to installation of the Development Plan.
 - 2) The Preliminary Plat/Site Plan must be in conformance with the General Development Plan.
 - iv. STEP 4: Staff Review and Transmission to the PZC
 - (a) Upon determination that a zoning map amendment application is complete, the Zoning Administrator shall distribute the application to all appropriate City departments and professional consultants for review and comment. Any comments or expert opinions shall be returned to the Zoning Administrator for transmission to the PZC.
 - (b) The Zoning Administrator shall report on the Agenda of the 1st meeting the filing of a request for the amendment. If no other items are listed on the agenda for consideration, the agenda will be posted.

- (c) The Zoning Administrator shall distribute the application and any reports prepared as part of Subsection b. above, at least three business days prior to the PZC's meeting where the application is to be reviewed.
 - (d) The Zoning Administrator shall make written notice of the public meeting before PZC by first class mail at least fourteen (14) days before the date of the meeting to all property owners located in the City within five hundred (500) feet in any direction of the property upon which the application has been filed.
 - (e) Notice shall also be made by sign posting on the property indicating a zoning change request and website for information. Where a zoning change involves ten (10) or more parcels, a sign posting will be exempt.
- v. STEP 5: PZC Review and Recommendation
- (a) Within 65 days, PZC shall make a recommendation on the application to City Council:
 - 1) Adoption of the zoning map amendment in conjunction with the approval of the General Development Plan,
 - 2) Adoption of the zoning map amendment in conjunction with the approval of the General Development Plan subject to specific conditions not included in the plan as submitted, or
 - 3) Denial of the General Development Plan. A denial of the General Development Plan also constitutes a recommendation to City Council to deny the Zoning Amendment.
 - (b) The PZC may, in its recommendation to City Council, require that the Final Development Plan be submitted in phases corresponding to different units or elements of the development. It may do so only upon evidence assuring completion of the entire development in accordance with the General Development Plan and phased development schedule.
 - (c) If PZC fails to make a recommendation within the established timeframe, the application will move forward to STEP 6 with a recommendation of denial.
 - (d) In reviewing the application, the PZC shall at a minimum, consider the reports and opinions transmitted by the Zoning Administrator and the review criteria of this section.
 - (e) At least four (4) affirmative votes shall be required of PZC members to recommend changing any property zoned residential to commercial, industrial or conditional-use classification per the Charter.
 - (f) All recommendations shall also be forwarded to the applicant, as applicable.
 - (g) City Council shall be forwarded the recommendations from PZC. Such recommendations may be modified by the Director of Law as to grammar and form but not as to substance.
- vi. STEP 6: City Council Review and Decision
- (a) Within 45 days after the PZC makes a recommendation (STEP 5), the application shall be placed on City Council's agenda and City Council shall set a time for a public hearing on the proposed amendment.
 - (b) Notification of the public hearing shall be provided in accordance with Section 1102.14 D.3.iv.d.
 - (c) City Council shall hold a public hearing regarding zoning map amendment application.
 - (d) In reviewing the application, City Council shall at a minimum, consider the reports and opinions transmitted by the Zoning Administrator, the recommendation from PZC, and the review criteria of this section.

- (e) City Council shall adopt, adopt with some modification, or deny the recommendation of the PZC with the concurrence of a simple majority of City Council.
 - (f) When the recommendations of PZC are overturned, at least five (5) affirmative votes are required from City Council.
 - (g) If a proposed amendment is not adopted by City Council within 120 days after City Council's first meeting following PZC's recommendation, such proposed amendment shall be deemed to have been defeated and denied and shall not thereafter be passed without a resubmission of an application.
 - (h) The effective date of any amendment shall be 30 days following final action by City Council unless subject to a referendum in accordance with the Ohio Revised Code.
 - (i) Significance of approved Zoning Map Amendment with General Development Plan shall:
 - 1) Establish the development framework for the project, including where applicable, the general location of open space, development areas, densities, unit types, recreational facilities, and street alignments.
 - 2) Be the basis for the application to proceed with detailed planning, a preliminary plat/site plan and engineering in reliance on the approved General Development Plan, if applicable.
 - 3) Provide the basis for the PZC and City Council to consider and approve amendments to the General Development Plan when it is determined that the proposed amendment is equal to or better than the approved General Development Plan. An amendment to General Development Plan shall be reviewed pursuant to STEP 5 above.
 - 4) Authorize the applicant to apply for all other required regulatory approvals for the project or subsequent phases thereof.
 - (j) Limitations of approval
 - 1) Within two years after the approval of the General Development Plan, the applicant shall file an application for review of the Final Development Plan for the entire development. PZC may authorize an extension of one year for just cause.
 - 2) If more than two years pass from the date of approval of the General Development Plan without submission of the Final Development Plan or an extension thereof, the General Development Plan shall be deemed expired and the applicant must resubmit such plan. After the General Development Plan has expired, the zoning designation shall revert to the previously applied zoning district. After the expiration of the General Development Plan, the City may also seek to rezone the property to another zoning district.
- vii. STEP 7: (If applicable) Submittal of Final Development Plan for PZC approval
 Where a Zoning Map Amendment involves a rezoning to a PRD, R-6 or Overlay District, a Final Development Plan is to be submitted prior to receiving a Zoning Certificate.
- (a) The applicant submits the application and fees with applicable documents. Within five (5) business days of receiving the application, the Zoning Administrator shall review the application to determine that the application is complete with required content as established by the Zoning Administrator. If the application is deemed complete and the application fee paid, the Zoning Administrator shall officially accept the application on that date.

- (b) The Zoning Administrator and/or PZC may refer the application to other City officials, and/or private consultants for their review. All costs incurred for private consultants shall be paid by the applicant. Comments from the other City officials and/or private consultants shall be returned to the Zoning Administrator not later than ten (10) days prior to the next scheduled meeting for consideration of the application on the agenda of PZC.
 - (c) The PZC will review the Final Development Plan to determine whether it conforms to all substantial respects to the previously approved General Development Plan and to all other applicable standards of this code.
- viii. STEP 8: PZC action
 - (a) PZC shall review the Final Development Plan and any other material related to the plan and shall:
 - 1) Approve the Final Development Plan,
 - 2) Approve the Final Development Plan subject to specific conditions not included in the plan as submitted, or
 - 3) or Deny the Final Development Plan. Reasons for the denial of the Final Development Plan shall be clearly stated in the minutes and conveyed to the applicant in writing.
 - (b) Significance of approved plan:
 - 1) Approval of the Final Development Plan solidifies the rezoning from the underlying zoning to the new zoning district. Furthermore, it allows the developer to proceed with improvement plans preparation and in the case of a major subdivision, final plat as per Chapter 1110 Development Standards.
 - (c) In the case of a major subdivision, the applicant shall be required to record a final subdivision plat within one year of the Final Development Plan approval, unless an alternative schedule is approved by PZC, or the Final Development Plan shall be deemed expired and the applicant shall be required to submit a new General Development Plan and Final Development Plan in accordance with this chapter. After the Final Development Plan has expired, the R6, PRD, or Overlay District zoning designation shall remain in place but no development shall be authorized unless the property owner, or authorized agent, submits a new General Development Plan for review pursuant to this chapter, or submits an application for a zoning map amendment to another zoning district. After the expiration of the General Development Plan, the City may also seek to rezone the property to another zoning district.
 - (d) Time Limit for Review. Failure of PZC to act within ninety (90) days from the date the application first appears on the agenda of the PZC, or an extended period as may be agreed upon, may, at the election of the applicant, be deemed a denial of the Final Development Plan.
- ix. STEP 9: Zoning Certificates and Building Permits
 - (a) Following the approval of the Site Plan or Final Development Plan, and recording of the final subdivision plat if applicable, the applicant may proceed with the zoning certificate and building permit process, consistent with this code and approval as granted, including any conditions and modifications made by the PZC.
 - (b) All construction and development under any building permit shall be in accordance with the approved Site Plan/Final Development Plan, except as may be permitted in Section 1102.14

E Compliance and Modifications of Approved Plans. Any unauthorized departure from such plan shall be cause for revocation of the zoning certificate.

E. Compliance and Modifications of Approved Plans

- (1) The development shall be constructed and completed in accordance with the approved Site Plan or Final Development Plan and all supporting data. The Site Plan/Final Development Plan and supporting data, together with all recorded amendments, shall be binding on the applicants, their successors, grantees and assignees, and shall limit and control the use of premises (including the internal use of buildings and structures) and the location of structures in the development as set forth therein.
- (2) Where a modification is requested for a single lot after a Final Development Plan is approved, the modification shall be reviewed in accordance with Section 1102.10 Variances.
- (3) Any request to change or otherwise modify the approved Site Plan/Final Development Plan as it applies to more than one property owner, shall be reviewed based on whether the change is considered major or minor, in accordance with this subsection.

i. Major Change

- (a) Major changes to a development generally require the prior approval of the PZC and City Council. The Zoning Administrator shall have the authority to determine if a proposed change is a major change. Such changes include, but are not limited to:
 - 1) Expansion of the development project beyond the original tract coverage;
 - 2) Changes to the list of permitted uses or the areas designated for certain land uses unless the Zoning Administrator finds that such change is to a similar use, in which case it may be approved by the PZC;
 - 3) Removal or subtraction of land from the original tract coverage; and Proposed changes that will result in an increase in density or an aggregate increase of more than 10 percent in nonresidential square footage.
- (b) Changes that require the approval of only PZC include, but are not limited to, the following:
 - 1) Changes in the site plan relative to the size and arrangement of buildings, the layout of streets or circulation patterns, the size, configuration and location of common open space, and changes in any approved elements of the development; and
 - 2) Amendments to the conditions that were attached to the original plan approval.

ii. Minor Changes

- (a) Minor changes are those proposed by the developer/owner that do not disturb or affect the basic design and approved concept plan of the Site Plan/Final Development Plan and which are essentially technical in nature, as determined by the Zoning Administrator.
- (b) Examples of minor changes include, but are not limited to, changes in the intensity of lighting, changes in the size and location of water and sewer lines within approved easements, minor changes to lot lines that do not adjust the overall density or number of lots, substitution of landscaping materials, and changes in the location and number of fire hydrants.
- (c) The Zoning Administrator shall notify the PZC of all such approved minor changes.

SECTION 1102.15 ZONING CODE TEXT AMENDMENTS.

A. Applicability of Zoning Code Text Amendments

(1) Amendments to the Zoning Code may be initiated in one of the following ways:

- i. By adoption of a motion by PZC;
- ii. By adoption of a motion by Council for PZC recommendation;

B. Zoning Code Text Amendment Review Standards

(1) The PZC and City Council shall consider whether the application provides adequate evidence that the text amendment is consistent with the applicable standards as listed. Not all criteria may be applicable in each case, and each case shall be determined on its own facts.

- i. The proposed amendment is consistent with the adopted City plans, and the stated purposes of this code;
- ii. The proposed amendment is necessary or desirable because of changing conditions, new planning concepts or other social or economic conditions;
- iii. The proposed amendment will promote the public health, safety and general welfare;
- iv. The proposed amendment would correct an error in the application of this Zoning Code.

C. Code Text Review Procedure:

(1) The review procedure for a code text shall be as established in this section.

i. STEP 1: Staff Review and Transmission to the PZC

- (a) The Zoning Administrator shall report on the Agenda of the 1st meeting the filing of a request for the amendment. If no other items are listed on the agenda for consideration, the agenda will be posted.
- (b) The Zoning Administrator shall distribute the request for amendment and any reports prepared as part of Subsection i. above, at least three business days prior to the PZC's meeting where the application is to be reviewed.

ii. STEP 2: PZC Review and Recommendation

- (a) Within 65 days PZC shall review and determine a recommendation on the Zoning Code Amendment request.
- (b) In reviewing the request, the PZC shall at a minimum, consider the reports and opinions transmitted by the Zoning Administrator and the review criteria of this section.
- (c) In making its recommendation, PZC may recommend approval, approval with some modification, or denial of the request. If PZC fails to make a recommendation within the established timeframe, the request will move forward to STEP 3 with a recommendation of denial.
- (d) City Council shall be forwarded the recommendations from PZC. Such recommendations may be modified by the Director of Law as to grammar and form but not as to substance.

iii. STEP 3: City Council Review and Decision

- (a) Within 45 days after the PZC makes a recommendation (STEP 2), the request shall be

placed on City Council's agenda and City Council shall set a time for a public hearing on the proposed amendment.

- (b) Notification of the public hearing shall be provided in accordance with Section 1102.14 D.3.iv.d
- (c) City Council shall hold a public hearing regarding the text amendment.
- (d) In reviewing the amendment, City Council shall at a minimum, consider the reports and opinions transmitted by the Zoning Administrator, the recommendation from PZC, and the review criteria of this section.
- (e) City Council shall adopt, adopt with some modification, or deny the recommendation of the PZC with the concurrence of a simple majority of City Council.
- (f) When the recommendations of PZC are overturned, at least five (5) affirmative votes are required from City Council.
- (g) If a proposed amendment is not adopted by City Council within 120 days after City Council's first meeting following PZC's recommendation, such proposed amendment shall be deemed to have been defeated and denied and shall not thereafter be passed without a resubmission of an application.
- (h) The effective date of any amendment shall be 30 days following final action by City Council unless subject to a referendum in accordance with the Ohio Revised Code.

SECTION 1102.16 APPEALS.

- A. Appeals Generally. Any person directly affected by a decision of the Zoning Administrator, a hearing officer, the PZC, or the THC shall have the right to appeal to the BZA, provided that a written application for appeal is filed within fourteen (14) days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted or the provisions of this code do not fully apply.
- B. Appeals with Respect to Conditional Use Applications. Notwithstanding anything to the contrary contained herein, the BZA shall not make a finding, decision or determination reversing the decision of the PZC of the City on a matter involving a conditional zoning permit unless the finding, decision or determination of the BZA is made with the concurrence of three-fourths of the members of the BZA. The BZA shall decide all such appeals within sixty-five (65) days after date of hearing except that such time may be extended by mutual consent.

SECTION 1102.17 REASONABLE ACCOMMODATION EXCEPTION

- A. Applicability. An applicant may request a reasonable accommodation in conjunction with any approval requested under this Code. Where an applicant makes such a request the following shall apply to the regulations set forth herein shall apply to such approval. For the purposes of this section, a request for a "Reasonable Accommodation Exception" shall mean a request to modify land use, zoning, and building regulations, policies, practices, or procedures in order to give people with disabilities an equal opportunity to use and enjoy a dwelling.

- B. Request in Writing. A request for a Reasonable Accommodation Exception shall be made in writing using the Reasonable Accommodation Exception Form and submitted to the Zoning Administrator. Alternate forms of submission may be accepted at the discretion of the Zoning Administrator. Assistance with completing this form will be provided upon request.
- C. Administrative Review. Any person seeking a Reasonable Accommodation Exception has the option of having the exception reviewed by the Zoning Administrator in lieu of any review by an applicable reviewing body, including but not limited to the BZA, the Heritage Commission or the PZC. Upon an applicant's election to forgo review by the applicable reviewing body, the Zoning Administrator must notify the reviewing body of the number of Reasonable Accommodation requests made and approved on a monthly basis.
- D. Administrator shall issue a written determination of the request no later than thirty (30) days from the date the request is submitted. In determining a request for a Reasonable Accommodation Exception, the Zoning Administrator, in conjunction with the Director of Law, shall consider the following factors:
 - (1) the necessity of the accommodation to afford a person with a disability an equal opportunity to use and enjoy a dwelling;
 - (2) whether the requested accommodation requires fundamental alterations to zoning laws, rules, policies, practices, and procedures; and
 - (3) whether the requested accommodation imposes an undue financial or administrative burden on the city.
 - (4) Other factors may be considered if they are explicitly listed in the written determination.
- E. Authority of Zoning Administrator. The Zoning Administrator, in conducting review of a request for a reasonable accommodation exception, has the same power as the applicable reviewing body with respect to the underlying approval.
- F. Appeals. Any person who elects to have his or her case reviewed by this administrative review procedure, may, after receipt of the decision of the Zoning Administrator appeal the decision to the BZA for a formal hearing. This hearing must be conducted at the next regularly scheduled meeting of the BZA, unless the next meeting occurs seven (7) days or less after the receipt of the appeal of the Zoning Administrator's decision, in which case the appeal will be heard at the second next scheduled meeting of the BZA.

SECTION 1102.18 VIOLATIONS AND REMEDIES

- A. Enforcement by the Zoning Administrator
 - (1) The Zoning Administrator is hereby designated as the enforcing officer of this code.
 - (2) The Zoning Administrator is hereby authorized to enforce as well as issue orders to prevent and stop violations of the provisions of this code.
 - (3) The Zoning Administrator may delegate enforcement responsibilities as permitted by the Director of Public Service.
- B. Violation. It shall be unlawful to:
 - (1) Fail or refuse to comply with an order issued by the Zoning Administrator.
 - (2) Use or occupy any land or place; build, erect, alter, remodel, restore or rebuild thereon any building or structure; permit any building or structure to remain on such land; or use, occupy, or operate such

building or structure, in any way or for any use or purpose which is not permitted by the provisions of this code;

- (3) Use or occupy any parcel of land; use or occupy a new building; or enlarge, substitute, or otherwise change the use, occupancy, or configuration of any land or building, without having received a zoning certificate, conditional use approval, certificate of zoning compliance or subdivision plat approval indicating compliance with the provisions of this code;
 - (4) Violate or fail to perform any condition, stipulation or safeguard set forth in any certificate issued pursuant to this code, or continue to use or occupy the premises or building as previously authorized by such certificate beyond the duration limit therein stated;
 - (5) Continue construction, renovation or improvements contrary to a stop work order or notice of violation;
 - (6) Knowingly make any materially false statement of fact in an application to the Zoning Administrator for a zoning certificate, conditional use approval, certificate of zoning compliance, or subdivision plat approval or in the plans or specifications submitted to the Zoning Administrator in relation to such application;
 - (7) Subdivide land in a manner contrary to the standards and regulations contained in this code; or
 - (8) Sell land that has not been subdivided in accordance with the regulations in this code.
 - (9) Each day's continuation of a violation of this section may be deemed a separate offense.
- C. Joint and Several Responsibility and Liability. Responsibility for violations of the Zoning Code is joint and several, and the city is not prohibited from taking action against a party where other persons may also be potentially responsible for the violation, nor is the city required to take action against all persons potentially responsible for a violation.
- D. Service of Notice. Service of warning notice of the violation and notice of civil offense shall be as follows:
- (1) By personal delivery to the person or persons responsible, or by leaving the notice at the usual place of residence of the owner with a person of sixteen (16) years or older; or
 - (2) By Certified Mail, or first-class mail, addressed to the person or persons responsible at a last known address. Service shall be deemed complete when the fact of the mailing is entered of record, provided that the first-class mail envelope is not returned by the Postal Authorities with an endorsement showing failure of delivery; or
 - (3) By posting a copy of the notice form in a conspicuous place on the premises found in violation.
 - (4) For purposes of giving notice of violations, once the Zoning Administrator has given notice of a specific violation of this code, that notice shall be deemed sufficient for each subsequent same violation.
- E. Warning Notice of Violation. Whenever the Zoning Administrator determines that there is a violation of any provision of this Zoning Code, a warning notice of such violation shall be issued. Such notice shall:
- (1) Be in writing;
 - (2) Identify the violation;
 - (3) Identify the date that the notice is issued;
 - (4) Include a statement of the reason or reasons why it is being issued and refer to the section of this Zoning Code being violated; and
 - (5) State the time by which the violation shall be corrected.

F. Notice of Civil Offense.

- (1) Whoever violates a provision of this Zoning Code shall have a reasonable amount of time after the warning has been delivered in accordance with Section 1102.17 D to comply with the applicable ordinance(s).
- (2) If the offender corrects a violation after a warning has been delivered in accordance with Section 1102.17 D but before receiving a Notice of Civil Offense in accordance with this section, the City is relieved of its obligation to provide a warning as required in Section 1102.17 for the same civil offense for the same offender for one (1) calendar year.
- (3) The Zoning Administrator or designee shall conduct a final investigation after the date provided in the written warning. If the offender remains in violation of the ordinance(s) at the time of the final investigation, then the Zoning Administrator or designee shall issue a Notice of Civil Offense.
- (4) A Notice of Civil Offense and civil fine must:
 - i. State the date that the Notice of Civil Offense is issued;
 - ii. Identify the offender being charged if known to the Zoning Administrator or designee;
 - iii. Indicate the offense charged, the amount of the civil fine for the offense, the date of the offense, and the location of the offense; and that the expense incurred by the City in correcting the violation can and will be added to the fine;
 - iv. Be signed and attested to by the Zoning Administrator or designee; and
 - v. Be served in accordance with Section 1102.17.

G. Answering a Notice of Civil Offense. An offender served with a Notice of Civil Offense charging a civil offense may file a written answer admitting the civil offense. The answer may be delivered in person or mailed to the City of Tallmadge Planning and Zoning Department and must be received by the City within ten (10) days from the date of the notice.

- (1) Payment of the civil offense fine specified in the notice shall be deemed an admission of the violation by the offender.
- (2) An answer with a full payment admitting that the offender violated an ordinance with proof of correction shall be evaluated by the Zoning Administrator to determine whether the correction was made within the first forty-eight (48) hours of receiving the Notice of Civil Offense. If the correction was made within the first forty-eight (48) hours, the offender will be eligible for a refund of fifty percent (50%) of the civil offense fine which will be issued within thirty (30) business days of the Zoning Administrator's decision.
- (3) An offender who fails to respond within ten (10) days shall be deemed in default and an admission to the offense by the offender. An offender subject to a civil fine entered after default may request to have the default set aside. A hearing officer may set aside a default on a showing that the offender had no actual knowledge of the Notice of Civil Offense and civil fine or that default should be excused in the interest of justice.

H. Hearings for Civil Offenses.

- (1) An offender who denies the commission of a civil offense must request a hearing before a hearing officer. The request shall be filed with the City of Tallmadge Planning and Zoning Department which shall set a date for the hearing and notify the offender, in writing, of the date, time and location of the hearing. The hearing may be informal, but all testimony shall be under oath. The hearing officer shall be appointed by the Director of Law.

- (2) All hearings shall be scheduled within then (10) days and will be held within fifteen (15) days from the date the request for a hearing is filed. Any hearing date may be modified if such modification is agreed to by the offender, by the city employee who issued the charge, and by the hearing officer or if such modification is necessary in the interest of justice.
 - (3) The hearing officer shall enter into the record of the proceedings the Notice of Civil Offense and civil fine, the filing of or failure to file an answer, the substance of the answer, a finding of liability, the civil fine due, payments, delinquency and collection charges, and other relevant information.
 - (4) The hearing officer shall issue a decision and make findings of fact from the record and conclusions of law in support of the decision within ten (10) days from close of the hearing. The findings and conclusions shall demonstrate that the decision is consistent with applicable laws, ordinances, regulations and the interest of justice. Any unpaid civil fine is due and must be paid within ten (10) days after the date of the hearing officer's decision.
- I. Appeal. An offender who disagrees with the decision of the hearing officer may request an appeal pursuant to Section 1102.15 of this code.
- J. Administrative Regulations. The Zoning Administrator may adopt administrative regulations for the conduct of hearings and for the enforcement of the Tallmadge Codified Ordinances through the issuance of notices of civil offenses.
- K. Extension of Compliance Date.
- (1) The Zoning Administrator may grant an extension of time for compliance with any notice or order, whether pending or final, upon the Zoning Administrator's finding that substantial progress toward compliance has been made and that the public will not be adversely affected by the extension.
 - (2) An extension of time may be revoked by the Zoning Administrator if it is shown that the conditions at the time the extension was granted have changed, if the Zoning Administrator determines that a party is not performing corrective actions as agreed, or if the extension creates an adverse effect on the public. The date of revocation shall then be considered as the compliance date.
- L. Remedies. The following remedies shall apply to violations of this Zoning Code:
- (1) Permit Revocation. Upon the discovery of a misrepresentation in an application, the Zoning Administrator may revoke the permit, certificate or other administrative approval that was issued contrary to the Zoning Code or based upon false information or a misrepresentation in the application.
 - (2) Civil Offense Fine Penalty.
 - i. Any person violating any provision of this Zoning Code shall be fined not more than five hundred dollars (\$500.00) for each offense. Each day of continuation of violation shall be deemed a separate offense.
 - ii. The City of Tallmadge shall provide the offender warning and notice pursuant to Section 1102.17 of the Tallmadge Codified Ordinances.
- M. Criminal Penalties.
- (1) Whosoever violates any provision of the Zoning Code is guilty of a misdemeanor of the third degree for each offense, the penalty for which shall be a maximum fine of five hundred dollars (\$500.00) and incarceration for a maximum period of sixty (60) days, or both plus payment of court costs for the action.

- (2) Each subsequent violation within two years of previously being convicted of or pleading guilty to a violation of this Zoning Code shall be a misdemeanor of the first degree which shall be punishable by a maximum fine of one thousand dollars (\$1,000.00) and incarceration for a maximum of six months, or both, plus payment of court costs for the action.
- (3) The City of Tallmadge shall provide the offender warning and notice pursuant to Section 1102.17 of the Tallmadge Codified Ordinances.
- (4) Additional Civil Remedies. The City of Tallmadge, the Mayor on behalf of the City of Tallmadge or any officer designated by the Mayor on behalf of the City of Tallmadge may, in addition to the criminal and civil offense fine remedies provided in this Zoning Code, file suit for injunction against any violation of this Zoning Code, or if the violation has caused damages to the City of Tallmadge for a judgment for damages and any person, property owner or occupant of property who can show that the person, property owner, or occupant of property has suffered harm or whose property has suffered harm as a result of violations of this Zoning Code may file suit for injunction or damages to the fullest extent provided by the law.
- (5) Nothing in this section shall limit the City of Tallmadge's ability to pursue any and all remedies in law or in equity to abate a violation. The City of Tallmadge may pursue any available remedy including permit revocation, civil offense fines, criminal charges, injunctions, restraining orders, damages, or any other remedy available under the law.

SECTION 1102.19 NONCONFORMITIES

- A. Purpose. The lawful use of any building or land existing at the effective date of this Zoning Code may be continued, although such use does not conform with the provisions of this Zoning Code, provided the following conditions are met:
- (1) Alterations. A non-conforming building or structure may be altered, improved, reconstructed, enlarged or extended provided such work does not exceed, in building area during any ten year period, sixty percent (60%) of the total area of the building or structure, unless the building or structure is changed to a conforming use.
 - (2) Restoration. Nothing in this Zoning Code shall prevent the reconstruction, repairing, rebuilding, and continued use of any non-conforming building or structure damaged by fire, collapse, explosion, or acts of God, subsequent to the date of this Zoning Code wherein the expense of such work does not exceed sixty percent (60%) of the fair market value of the building or structure at the time such damage occurred.
 - (3) Construction Approved Prior to Zoning Code. Nothing in this Zoning Code shall prohibit the completion of construction and use of a non-conforming building for which a zoning certificate has been issued prior to the effective date of this Zoning Code, provided that construction is commenced within ninety days after the issuance of such certificate; that construction is carried on diligently and without interruption for a continuous period in excess of thirty days; and that the entire building shall have been completed within two years after the issuance of the zoning certificate.
 - (4) Displacement. No non-conforming use shall be extended to displace a conforming use.
 - (5) Discontinuance or Abandonment. Whenever a non-conforming use has been discontinued or abandoned for a period of one year, 12 consecutive months, such discontinuance or abandonment shall be considered conclusive evidence of an intention to discontinue or abandon legally the non-conforming use. At the

end of that one-year period of discontinuance or abandonment the non-conforming use shall not be re-established, and any further use shall be in conformity with the provisions of this Zoning Code. Discontinuance or abandonment shall mean that the structure or land has remained vacant, unoccupied, unused or has ceased the daily activities or operations which had previously occurred.

- (6) **Illegal Nonconforming Uses.** Non-conforming uses existing at the effective date of this Zoning Code established without a zoning certificate, or those non-conforming uses which cannot be shown conclusively as existing prior to the effective date of this Zoning Code shall be declared illegal non-conforming uses and shall be discontinued within a period of two years following the effective date of this Zoning Code.
- (7) **Unsafe Structures.** Nothing in this Zoning Code shall prevent the strengthening or restoring, to a safe condition, of any portion of a building or structure declared unsafe by a proper authority.
- (8) **Non-Conforming Signs** shall conform to Chapter 1108 Signage.

