

**ORDINANCE NO.:** 05-04  
**SPONSOR:** MAYOR BOLLAS  
**INTRODUCED:** JANUARY 3, 2005

**AN ORDINANCE TO CREATE A BOARD OF ZONING APPEALS IN THE VILLAGE OF NEW FRANKLIN, AND DECLARING AN EMERGENCY.**

WHEREAS, the Council of the Village of New Franklin desires to create a Village Board of Zoning Appeals pursuant to Chapter 713 of the Ohio Revised Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF NEW FRANKLIN, COUNTY OF SUMMIT, AND STATE OF OHIO, THAT:**

**SECTION ONE:**

A Board of Zoning Appeals is hereby created and shall have all the powers and duties prescribed by law and by this Ordinance.

**SECTION TWO:**

The Board shall consist of five (5) members appointed by the Council of New Franklin. The members shall be residents of the Village of New Franklin. Each member shall serve until his successor is appointed and qualified. Members shall be removable for nonperformance of duty, misconduct in office, or other cause, by the Council, upon written charges being filed with the Council, after a public hearing has been held regarding such charges, and after a copy of the charges has been served upon the member so charged at least ten (10) days prior to the hearing, either personally, by registered mail, or by leaving such copy at his usual place of residence. The member shall be given an opportunity to be heard and answer such charges. Vacancies shall be filled by appointment of the Council and shall be for the unexpired term.

The appointed terms shall be for a period of five (5) years except for those persons who are appointed to the first Board. Of those appointed to the first Board, the term of the first person appointed shall be five (5) years, the term of the second person appointed shall be four (4) years; the term of the third person appointed shall be three (3) years; the term of the fourth person appointed shall be two (2) years; and the term of the fifth person appointed shall be one (1) year. At their discretion, Council may appoint an alternate member to serve for any period from one (1) to five (5) years.

**SECTION THREE:**

The Board shall elect a chairman from its membership, shall appoint a Recording Secretary, and shall prescribe rules for the conduct of its affairs.

**SECTION FOUR:**

Three (3) members of the Board shall constitute a quorum at all meetings. A concurring vote of three (3) members shall be necessary to effect an order, take action, make a decision, or act on any authorization.

**SECTION FIVE:**

The Board shall meet at the call of its chairman and at such other times as it may determine. All meetings of the Board shall be open to the public.

**SECTION SIX:**

The Board chairman, or acting chairman, may administer oaths and the Board may compel the attendance of witnesses in all matters coming within the purview of the Board.

**SECTION SEVEN:**

The Board shall keep minutes of its proceeding showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions all of which shall be immediately filed in the office of the Council of New Franklin and shall be a public record.

**SECTION EIGHT:**

The Board of Zoning Appeals shall have the following powers:

- a) The Board shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Inspector in the enforcement of this Resolution.
- b) The Board shall have the power to authorize, upon appeal, in specific cases, such variance from the terms of the Zoning Code as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the Zoning Code will result in unnecessary hardship, and so that the spirit of the Zoning Code shall be observed and substantial justice done. In granting a variance, the Board may impose such

conditions as it may deem necessary to protect the public health, safety, and morals and in furtherance of the purposes and intent of the Zoning Code.

- c) The Board shall have the power to grant conditional zoning certificates for the use of land, buildings, or other structures as specifically provided for elsewhere in the Zoning Code.
- d) The Board of Zoning Appeals shall have no authority to permit a use where such use is not permitted by the Zoning Code.

#### **SECTION NINE:**

Appeals to the Board may be taken by any person or by any officer, board or department of the Village of New Franklin, deeming himself or itself to be adversely affected by the decision of the Zoning Inspector or any decision in which the Board has original jurisdiction. Such appeal shall be taken within twenty (20) days after the decision. The appellant shall post security for the cost of all action required for the hearing of the appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Inspector whose decision is appealed, shall certify to the Board of Zoning Appeals after the notice of the appeal has been filed, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed by other than a restraining order granted by the Board or by a court having lawful jurisdiction. Within its powers, the Board of Zoning Appeals may reverse or affirm, wholly or in part or modify the order, requirement, decision or determination as in its opinion ought to be done, and to that end shall have all the powers of the Zoning Inspector from whom the appeal is taken, and it may issue or direct the issuance of a permit or certificate. The Board of Zoning Appeals shall decide all such appeals within a reasonable time after date of hearing.

#### **SECTION TEN:**

The Board of Zoning Appeals shall act in accordance with the procedure specified by law including this Ordinance. All appeals and applications made to the Board shall be in writing and on the forms prescribed therefor. Every appeal or application shall refer to the specified provision of the Zoning Code involved, and shall exactly set forth the interpretation that is claimed, the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. Every decision of the Board shall be by resolution, each of which shall contain a full record of the findings of the Board by case number under one or another of the

following headings: Interpretation; Variances; Conditional Zoning Certificate; together with all documents pertaining thereto.

**SECTION ELEVEN:**

When a notice of appeal has been filed in proper form with the Board of Zoning Appeals, the Secretary shall immediately place the said request for appeal upon the calendar for hearing, and shall cause notices stating the time, place, and object of the hearing to be served personally or by mail addressed to the parties making the request for appeal, at least ten (10) days prior to the date of the scheduled hearing. All notices shall be sent to addresses given in the last assessment roll. Such hearings shall be advertised by one (1) publication in one (1) or more newspapers of general circulation in the Village of New Franklin at least ten (10) days before the date of such hearing. The Board at its discretion may send out further notices to publicize such hearings. The Board may recess such hearings from time to time, and, if the time and place of the continued hearing be publicly announced at the time of adjournment, no further notice shall be required.

**SECTION TWELVE:**

A certified copy of the Board's decision shall be transmitted to the applicant or appellant and to the Zoning Inspector. Such decision shall be binding upon the Zoning Inspector and observed by him and he shall incorporate the terms and conditions of the same in the zoning certificate or conditional zoning certificate to the applicant or appellant, whenever a permit is authorized by the Board. A decision of the Board shall not become final until the expiration of five (5) days from the date such decision is made, unless the Board shall find the immediate taking effect of such decision is necessary for the preservation of property or personal rights and shall so certify on the record.

**SECTION THIRTEEN:**

Any request for an interpretation, exception, variance or appeal from the Board shall be accompanied by a minimum fee as set by the Council of the Village of New Franklin and shall not be refundable. In the event that the Board will find it necessary to draw upon any planning, legal, engineering, or any other expert testimony, such fee shall be raised in order to cover all expenses of such expert testimony.

**SECTION FOURTEEN:**

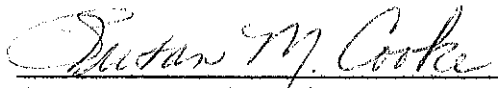
MEMBERS OF THE BOARD OF ZONING APPEALS SHALL BE PAID FORTY AND 00/100 DOLLARS (\$40.00) FOR EACH MEETING ATTENDED. IN NO EVENT SHALL ANY MEMBER OF THE BOARD OF ZONING APPEALS BE

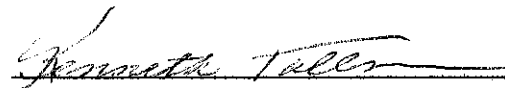
PAID MORE THAN SEVEN HUNDRED AND TWENTY AND 00/100 DOLLARS (\$720.00) IN ANY CALENDAR YEAR.

**SECTION FIFTEEN:**


Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety and welfare of the citizens of New Franklin. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: January 3, 2005

  
Susan M. Cooke, Clerk/Treasurer

  
President, Pro-Tem

APPROVED: January 3, 2005

  
Al Bollas, Mayor

ENACTED EFFECTIVE: January 3, 2005

**ON ROLL CALL:**

Mr. Adamson, yes.

Mrs. Jones, yes.

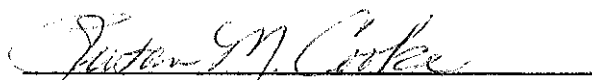
Mr. Lee, yes.

Mr. Mobley, yes.

Mr. Stock, yes.

Mr. Tallman, yes.

Suburbanite publications on January 17, 2005 and January 24, 2005.

  
Susan M. Cooke, Clerk/Treasurer