

ORDINANCE NO.	<u>2024- 60</u>	FIRST READING	<u>May 13, 2024</u>
INTRODUCED BY:	<u>CHRIS BELL</u>	SECOND READING	<u>WAIVED</u>
		THIRD READING	<u>WAIVED</u>

ORDINANCE AMENDING SECTION 3.07(c) OF THE ZONING CODE OF THE VILLAGE OF SOUTH RUSSELL AND DECLARING AN EMERGENCY.

WHEREAS, after following the amendment process provided in Section 3.06 of the Zoning Code for the Village of South Russell and after a public hearing, Council desires to amend Section 3.07(c) of the Zoning Code of the Village of South Russell to provide when the Board of Zoning Appeals or Planning Commission must act, and when such action shall be certified, on appeals.

NOW, THEREFORE, BE IT RESOLVED by Council of the Village of South Russell that:

SECTION 1. Section 3.07(c) of the Zoning Code of the Village of South Russell is hereby deleted in its entirety and replaced to read as follows:

“Action: Within thirty-five (35) days after the public hearing, the Board, or the Commission, as the case may be, shall approve, conditionally approve or disapprove the application. Board or Commission action, including any conditions thereto, shall be certified by the Secretary on Form Z-6 within five (5) business days of the approval of the meeting minutes of the Board or Commission action and one (1) copy shall be returned to the applicant and one (1) forwarded to the Zoning Inspector. Any rights obtained by variance and any permit issued shall become void if such permit would become void under Section 3.01(d). In determining whether or not an application for a height variance should be approved, the Commission shall be guided by the provisions of Section 4.02 and divisions (c)(1), (c)(2), (c)(3) and (c)(4) of this section. In determining whether or not the application should be approved, conditionally approved, or disapproved, the action of the Board shall be based on the following standards and criteria:

1. Variances to use regulations may be granted only to the following extent:
 - (a) The property cannot be used for any permitted use within the district;
 - (b) The variance would not be detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the property is located; and
 - (c) The variance shall be the minimum necessary in order to provide adequate relief to the property owner.
2. Where the appellant seeks a variance pertaining to an area requirement otherwise applicable to the property, no variance may be granted unless the appellant has demonstrated the literal enforcement of the provisions or requirements of the Zoning Code pertaining to area requirements would cause the appellant practical difficulties. The factors to be considered and weighed in determining whether an appellant seeking an area variance has

encountered practical difficulties in the proposed use of his property include, but are not limited to:

- (a) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- (b) Whether the variance is substantial;
- (c) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
- (d) Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
- (e) Whether the appellant purchased the property with knowledge of the zoning restrictions;
- (f) Whether the appellant's predicament feasibly can be obviated through some method other than a variance;
- (g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

- 3. Where the Board has determined that literal enforcement of the requirements of the Zoning Code would involve practical difficulties or would cause undue hardship, unnecessary to carry out the spirit and purpose of the Zoning Code, the Board shall have power to authorize a variance from such strict application so as to relieve such hardship or practical difficulties so that the spirit and purpose of the Zoning Code shall be observed and substantial justice done. In authorizing a variance the Board may attach thereto such conditions regarding the location, character and other features of the proposed structure or use as it deems necessary in the interest of the furtherance of the purpose of the Zoning Code and in the public interest. In authorizing a variance with attached conditions the Board shall require such evidence and guaranty or bond as it may deem to be necessary to ensure that the conditions attached are being and will be complied with.
- 4. No such variance in the provisions or requirements of the Zoning Code shall be authorized by the Board unless the Board finds that the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of the Zoning Code or the public interest.
- 5. Variances to area regulations may be granted only to the following extent:
 - (a) A lot of record held in single and separate ownership on the effective date of this Code may be used as a site for a single-family dwelling as provided for in the Code, provided the owner cannot acquire at a reasonable cost additional vacant land adjoining the lot.

- (b) The Board may vary minimum floor area regulations of dwellings, but by no more than ten percent, if by reason of conformance to lot frontage, area or yards specified in the Code, or by exceptionally skillful arrangement of site design, the result of such a variance would be in harmony with the character of the neighborhood.
- 6. Variances to yard regulations may be granted only to the following extent:
 - (a) The Board may permit as may be necessary for the appropriate development of a lot, or because of peculiar shape or topographical reasons, variances to the required yards, provided light and ventilation will be adequate, and privacy will not be impaired, and provided the owner cannot acquire at a reasonable cost additional vacant land adjoining the lot.
 - (b) The Board may permit a modification of required side yard so as to allow a garage to be attached to a one-family dwelling constructed before the effective date of this Code to project into a required side yard, providing the resulting side yard is not less than five feet and further providing that the distance to a building or structure on the adjoining lot is greater than ten feet.
- 7. The Board may permit an increase in height of a proposed or existing structure or part thereof to the same height as adjacent structures, except the Board may not grant any increases in height to any residential dwellings permitted in Chapter 4.
- 8. Nothing in this Code shall be deemed to prohibit any municipal official from appealing to the appropriate court from any Board decision.
- 9. In the event the Board grants a variance, in so doing the Board shall in writing specify the findings of facts in support of such a variance.”

SECTION 2. Existing section 3.07(c) of the Zoning Code of the Village of South Russell, the full text of which follows, is hereby repealed in its entirety:

“Action: Within fifteen days after the public hearing, the Board, or the Commission, as the case may be, shall approve, conditionally approve or disapprove the application. Board or Commission action, including any conditions thereto, shall be certified by the Secretary on Form Z-6 and one copy shall be returned to the applicant and one forwarded to the Zoning Inspector. Any rights obtained by variance and any permit issued shall become void if such permit would become void under Section 3.01(d). In determining whether or not an application for a height variance should be approved, the Commission shall be guided by the provisions of Section 4.02 and divisions (c)(1), (c)(2), (c)(3) and (c)(4) of this section. In determining whether or not the application should be approved, conditionally approved, or disapproved, the action of the Board shall be based on the following standards and criteria:

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 - (c) The variance shall be the minimum necessary in order to provide adequate relief to the property owner.
2. Where the appellant seeks a variance pertaining to an area requirement otherwise applicable to the property, no variance may be granted unless the appellant has demonstrated the literal enforcement of the provisions or requirements of the Zoning Code pertaining to area requirements would cause the appellant practical difficulties. The factors to be considered and weighed in determining whether an appellant seeking an area variance has encountered practical difficulties in the proposed use of his property include, but are not limited to:
- (a) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
 - (b) Whether the variance is substantial;
 - (c) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
 - (d) Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
 - (e) Whether the appellant purchased the property with knowledge of the zoning restrictions;
 - (f) Whether the appellant's predicament feasibly can be obviated through some method other than a variance;
 - (g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
3. Where the Board has determined that literal enforcement of the requirements of the Zoning Code would involve practical difficulties or would cause undue hardship, unnecessary to carry out the spirit and purpose of the Zoning Code, the Board shall have power to authorize a variance from such strict application so as to relieve such hardship or practical difficulties so that the spirit and purpose of the Zoning Code shall be observed and substantial justice done. In authorizing a variance the Board may attach thereto such conditions regarding the location, character and other features of the proposed structure or use as it deems necessary in the interest of the furtherance of the purpose of the Zoning Code and in the public interest. In authorizing a variance with attached conditions the Board shall require such

evidence and guaranty or bond as it may deem to be necessary to ensure that the conditions attached are being and will be complied with.

4. No such variance in the provisions or requirements of the Zoning Code shall be authorized by the Board unless the Board finds that the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of the Zoning Code or the public interest.
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7. The Board may permit an increase in height of a proposed or existing structure or part thereof to the same height as adjacent structures, except the Board may not grant any increases in height to any residential dwellings permitted in Chapter 4.
8. Nothing in this Code shall be deemed to prohibit any municipal official from appealing to the appropriate court from any Board decision.
9. In the event the Board grants a variance, in so doing the Board shall in writing specify the findings of facts in support of such a variance.”

SECTION 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after December 2, 1975, that resulted in formal action, were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 4. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the Village of South Russell and to immediately apply such amendment in the Village of South to appeals to the Board of Zoning Appeals or the Planning Commission; wherefore, provided it receives the affirmative vote of at least two-thirds (2/3) of all members elected to Council, this Ordinance shall be in full force and effect immediately upon its passage.



Mayor - President of Council

ATTEST:



Fiscal Officer

I certify that Ordinance No. 2024-60 was duly enacted on the 13TH day of MAY, 2024, by the Council of the Village of South Russell, and published in accordance with the Codified Ordinances of the Village.



Fiscal Officer