

**CITY OF GERMANTOWN  
APPLICATION FOR CONDITIONAL USE**

One North Plum Street  
Germantown, OH 45327  
Phone (937) 855-7255 Fax (937) 855-3215

Date: \_\_\_\_\_ Application # \_\_\_\_\_

Property Address: \_\_\_\_\_

Property ID Number: \_\_\_\_\_

Property Owner: \_\_\_\_\_ Phone: \_\_\_\_\_

Applicant (if other than property owner): \_\_\_\_\_

Applicant Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Zoning District: \_\_\_\_\_ Existing Use: \_\_\_\_\_

Conditional Use Permit requested under Section \_\_\_\_\_ of the Zoning Ordinance

Proposed Conditional Use: \_\_\_\_\_

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Narrative statement discussing the compatibility of the proposed use with the existing uses adjacent.  
**Please use back of application or another sheet of paper.**

The undersigned requests a conditional use permit for the use specified above. Should the application be approved, it is understood that it shall only authorize that particular use as allowed by the applicable sections of the Zoning Ordinance and with any conditions set forth by the Board of Zoning Appeals. A conditional use permit shall expire in one year after it is issued unless the use has taken place or is underway except as provided in the Zoning Ordinance.

In addition to the specific requirements for conditionally permitted uses as specified in this Section, the Boarding of Zoning Appeals shall determine the following facts and circumstances of each proposed use in terms of the standards listed below and shall find adequate evidence showing that such use at the proposed location:

- A) Is in fact a conditional use as established under the provisions of these regulations and appears on the schedule of district regulations adopted for the zoning district involved;
- B) Will be in accordance with the general objectives, or with any specific objective, of the City's comprehensive plan and/or Zoning Code;

- C) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
- D) Will not be hazardous or disturbing to existing or future neighboring uses;
- E) Will be served adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water/sewer and schools: or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service;
- F) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
- G) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- H) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets;
- I) Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance;
- J) Will otherwise be in conformance with all other sections of this ordinance.

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Signature of Property Owner

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Signature of Applicant

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Date

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Date

### **1129.14 HOME OCCUPATIONS.**

(a) This section seeks to balance the needs of some individuals to work at with rights of other individuals to enjoy the residential character of their neighborhood and their private property. Further, the purpose of this section is to protect the health, safety, and welfare of the neighborhood residents and the preservation of the neighborhood as a comfortable place for the people who live there.

(b) It is also the intent and purpose of this section to provide for certain types of restricted occupational uses within residential districts. Only such uses will be allowed which:

- (1) Are incidental to the use of the premises as a residence;
- (2) Are compatible with residential uses;
- (3) Are limited in extent; and
- (4) Do not detract from the residential character of the neighborhood.

(c) Home occupations are permitted in the A, R-1AAA, R-1AA, R-1A, R-1, R-2 and R-3 Districts. "Home occupation" means an occupation conducted in a dwelling unit, provided that:

- (1) Only members of the family residing on the premises shall be engaged in a home occupation, with the exception that the family operating the home occupation shall be allowed to have no more than one employee engaged in providing the home occupation services.
- (2) The use of the dwelling unit or other incidental structures used for the purpose of engaging in the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty-five percent (25%) of the floor area of the dwelling unit shall be used in the conduct of the home occupation. In the case of the use of accessory structures, there shall be no limitation on the percentage of the floor area which may be used therein in the conduct of the home occupation.
- (3) There shall be no exterior visible evidence of the conduct of a home occupation.
- (4) No traffic shall be generated by a home occupation in greater volume than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall meet the off-street parking requirements as specified in this Zoning Ordinance and shall not be located in a required front yard.
- (5) No equipment or process shall be used in a home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment may be used which causes fluctuations in line voltage off the premises, nor shall the electrical interference create any visible or audible interference in radio or television receivers.
- (6) The residential character of the dwelling exterior shall not be changed.
- (7) No offensive noise, vibrations, smoke, or other particulate matter, odorous matter, heat, humidity, glare or other objectionable affect within shall be produced therein or therefrom.
- (8) No merchandise shall be sold or processed except that which is produced or incidental to the services rendered on the premises.
- (9) All owners of home occupations shall register for Municipal Income Tax.
- (10) All home occupations shall require a Conditional Use Permit.
- (11) Upon receipt of the application for a Conditional Use Permit as required in subsection (c)(10) hereof, the Manager shall provide written notice to all parties who either own or reside in any property which is within 200 feet of the property which is the subject of the Home Occupation/Conditional Use Permit application. This

written notification shall notify the recipient that he/she has 14 days from the date of the mailing of the notification in order to contact the Manager with any objections that he/she may have concerning the granting of the requested Conditional Use Permit. If no objections are received by the Manager, and if the Conditional Use Permit meets all other requirements, then the Conditional Use Permit shall be granted. If, however, the Manager receives objection(s) to the granting of the Conditional Use Permit then the Manager shall place the matter on the agenda for a public hearing with the Board of Zoning Appeals, but in no event shall said public hearing be held after 45 days subsequent to the receipt of the application for a Conditional Use Permit. Whether the Conditional Use Permit application is approved by either the Manager or the Board of Zoning Appeals, either the Manager or the Board of Zoning Appeals may, at their discretion, impose restrictions as they deem appropriate.

- (12) Any violation of Section 1129.14 of the Codified Ordinances of the Municipality of Germantown shall result in an immediate revocation of the Conditional Use Permit. In the event that a Conditional Use Permit previously issued is revoked, such revocation may be without hearing. In the event that the Conditional Use Permit is revoked without hearing, the holder of the Conditional Use Permit shall be entitled to a hearing and said hearing must be requested by the holder of the Conditional Use Permit within five (5) days of the revocation of same without hearing. In the event that the holder of the Conditional Use Permit requests a hearing on the revocation of the Conditional Use Permit, said hearing shall be held within ten (10) days of the date that said request for hearing is made. Said hearing shall be held before the Board of Zoning Appeals and the Board of Zoning Appeals shall, within thirty (30) days after the hearing, either make a finding in support of the revocation of the Conditional Use Permit, make a finding against the revocation of the Conditional Use Permit, or place additional conditions on the use of the property but not revoke the Conditional Use Permit.

(Ord. 13-61. Passed 11-4-13.)

## CHAPTER 1131

### Conditional Uses; Substantially Similar Uses

- 1131.01 **Contents of conditional use permit application.**
- 1131.02 **General standards for all conditional uses.**
- 1131.03 **Action by the Board of Zoning Appeals.**
- 1131.04 **Additional criteria.**
- 1131.05 **Public hearing.**
- 1131.06 **Notice of public hearing in newspaper.**
- 1131.07 **Notice to parties of interest.**
- 1131.08 **Procedure and requirements to determine that a use is substantially similar.**

### CROSS REFERENCES

Conditional use defined - see P. & Z. 1123.02

#### **1131.01 CONTENTS OF CONDITIONAL USE PERMIT APPLICATION.**

Any owner, or agent thereof, of property for which a conditional use is proposed shall make an application for a Conditional Use Permit by filing it with the Municipal Manager, who shall within 20 days transmit it to the BZA. Such application at a minimum shall contain the following information:

- (a) Name, address, and phone number of the applicant.
- (b) Locational description of the property.
- (c) Zoning district.
- (d) Description of existing use.
- (e) Description of proposed conditional use.
- (f) A plan of the proposed site for the conditional use showing the location of all buildings, parking and loading areas, streets and traffic accesses, open spaces, refuse and service areas, utilities, signs, yards, lot lines, landscaping features, and such other information as the Municipal Manager or the Board may require.
- (g) A narrative statement discussing the compatibility of the proposed use with the existing uses of adjacent properties and with the comprehensive plan, to include an evaluation of the effects on adjoining properties of such elements as traffic circulation, noise, glare, odor, fumes, and vibration.
- (h) A list containing the names and mailing addresses of all owners of property within 200 feet of the property in question.

(i) A fee as established by the Zoning Code. (See Section 1145.08 Schedule of Fees.)

(j) A narrative addressing each of the applicable criteria contained in the following Section 1131.02, General Standards For All Conditional Uses.

(Ord. 00-30. Passed 6-5-2000.)

### **1131.02 GENERAL STANDARDS FOR ALL CONDITIONAL USES.**

In addition to the specific requirements for all conditionally permitted uses as specified in this section, and notwithstanding the procedural requirements for Home Occupation as found in Section 1129.14, the BZA shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

(a) Is in fact a conditional use as established under the provisions of these Regulations and appears on the schedule of District Regulations adopted for the zoning district involved.

(b) Will be in accordance with the general objectives, or with any specific objective, of the Municipality's Comprehensive Plan and/or the Zoning Code;

(c) Will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;

(d) Will not be hazardous or disturbing to existing or future neighboring uses;

(e) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service;

(f) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

(g) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;

(h) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets;

(i) Will not result in the destruction, loss, or damage of a natural, scenic or historic feature of major importance;

(j) Will otherwise be in conformance with all other sections of this Zoning Code.

(Ord. 13-62. Passed 11-4-13.)

### **1131.03 ACTION BY THE BOARD OF ZONING APPEALS.**

Within 30 days after either the receipt of application or the date of the public hearing, the BZA shall take one of the following actions:

(a) Approve issuance of the Conditional Use Permit by making an affirmative finding in writing that the proposed conditional use is to be located in a district wherein such use may be conditionally permitted, that all conditions for approval of such use in such district have been met, and that such use will neither result in significant negative impacts upon nor conflict with surrounding uses. Such written finding may also prescribe supplemental conditions and safeguards. Upon making an affirmative finding, the BZA shall direct the Municipal Manager to issue a Conditional Use Permit for such use which shall list all conditions and safeguards specified by the BZA for approval.

(b) Make a written finding that the application is deficient in information or is in need of modification and is being returned to the applicant. Such finding shall specify the information and/or modifications which are deemed necessary. Make a written finding that the application is denied and specify the reason(s) for disapproval.

(Ord. 00-30. Passed 6-5-2000.)

### **1131.04 ADDITIONAL CRITERIA.**

(a) Additional Conditions. The BZA may impose other conditions for a conditional use in addition to those prescribed in this Section if, in the BZA's judgment, additional conditions are necessary for the protection of the public health and for reasons of safety, and convenience.

(b) Supplemental Conditions and Safeguards. In granting approval for any conditional use, the BZA may prescribe appropriate conditions and safeguards in conformance with this Zoning Code. Any violation of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a punishable violation of this Zoning Code.

(c) Expiration of Conditional Use Permit. A Conditional Use Permit shall be deemed to authorize only one particular conditional use, and said permit shall automatically expire if such conditionally permitted use has not been instituted or utilized within 1 year of the date on which the permit was issued, or if for any reason such use shall cease for more than 2 years.

(Ord. 00-30. Passed 6-5-2000.)

#### **1131.05 PUBLIC HEARING.**

A public hearing shall be held by the BZA in considering an application for a Conditional Use Permit.

The BZA shall hold a public hearing within 30 days after it receives an application for a Conditional Use Permit submitted by an applicant through the Municipal Manager.

(Ord. 00-30. Passed 6-5-2000.)

#### **1131.06 NOTICE OF PUBLIC HEARING IN NEWSPAPER.**

Before conducting a public hearing, notice of such hearing shall be given in one newspaper of general circulation in the Municipality of Germantown at least 10 days before the date of said hearing. The notice shall set forth the time and place of the hearing, and shall provide a summary explanation of the conditional use proposed.

(Ord. 00-30. Passed 6-5-2000.)

#### **1131.07 NOTICE TO PARTIES OF INTEREST.**

Prior to conducting a public hearing, written notice of such hearing shall be by first-class mail, at least 10 days before the date of the hearing to all parties of interest, to include all parties within 200 feet. The failure to deliver the notification as provided in this Section shall not invalidate any such amendment. The notice shall contain the same information as required in Section 1135.06 Notice of Public Hearing in Newspaper.

(Ord. 00-30. Passed 6-5-2000.)

#### **1131.08 PROCEDURE AND REQUIREMENTS TO DETERMINE THAT A USE IS SUBSTANTIALLY SIMILAR.**

Where a specific use is proposed that is not listed or provided for in this Zoning Code, the Municipal Manager will make a determination, if the proposed use is substantially similar to a specific use that is listed or provided for in this Zoning Code. If the Municipal Manager finds that a use is substantially similar to a specific use listed in this Zoning Code, the substantially similar use is deemed to be a substantially similar permitted use in those districts where the specific use is a permitted use, and a substantially similar conditional use in those districts where the specific use is a conditionally permitted use.

The following standards shall be considered by the Municipal Manager when making a determination that a use is substantially similar to a permitted or a conditional use within a specific district:

(a) The compatibility of the proposed use with the general use classification system as specified in this Zoning Code.

(b) The nature, predominant characteristics, and intensity of the proposed use in relation to those uses specified by this Zoning Code as being permitted, or in the case of a conditional use, conditionally permitted, in that district.

(c) The size, dimensional requirements, parking requirements, traffic generation potential, and other regulatory considerations normally associated with uses as specified in this Zoning Code.

Should a use be determined to be substantially similar to a specific permitted or conditionally permitted use provided for in this Zoning Code, it shall then be permitted in the same manner and under the same conditions and procedures as the use is permitted to which it has been found to be substantially similar.

If the Municipal Manager determines that a proposed use is not substantially similar, such determination can be appealed to the BZA. If the BZA concurs with the Municipal Manager determination remedy may be sought by the appellant through the submission of an application for amendment to the Zoning Code. However, if the Municipal Manager determines that a proposed use is substantially similar, such determination can also be appealed to the BZA by other affected or interested parties.

The Municipal Manager shall maintain as a public record a listing of all uses which have been determined to be substantially similar. For each such use the record shall include the use as listed in the Zoning Code, the use listed in the Zoning Code about which the determination of substantial similarity was made, and the dates of any actions thereupon. This record shall also contain the same information for all uses which have been determined not to be substantially similar. The Municipal Manager shall consult this record in the process of issuing future permits.

(Ord. 00-30. Passed 6-5-2000.)

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