

# City of NAPOLEON, OHIO

255 RIVERVIEW AVENUE - (419) 592-4010  
NAPOLEON, OHIO 43545-0151

January 9, 1990

Doug Bischoff  
19 Lakeview Drive  
Napoleon, Ohio 43545

Re: 153 E. Maumee  
Single Family Dwelling Being Converted to  
a Two Family Dwelling.

Dear Doug:

As per your request enclosed find one copy of the application for a Board of Building Appeals Hearing. Also I have enclosed for your reference a copy of Section 150.04 listing the procedure for filing an appeal.

Please refer to my letter dated January 4, 1990 and list the specific requirements which you wish to appeal. If you should want to appeal the parking requirements of four spaces for a two family dwelling, you will need to do so by filing a separate appeal with the Board of Zoning Appeals.

Note: I would point out, that we were not able to determine what the second floor construction consisted of during our inspection Thursday afternoon. I suggest that you cut a core sample and find out what that construction is before you file your appeal, if there are two layers of sub floor depending on their thickness.

With regard to your contention that the structure had been a duplex in the past, the records in my file (permits issued in 1977) indicate otherwise. However the utilities department records indicate that the residence was being billed at the commercial rate thru May 31, 1983. I am inclined to accept the utility department records over my own. This establishes that the structure was converted from two family to one family when Tom Delgreco purchased it on May 31, 1983. Therefore, it has been a single family residence for six years and four months.

Section 151.31 Paragraph E of the Napoleon Zoning Code concerning non conforming uses being grandfathered states that if a non conforming use is discontinued for a period of two years, it shall not be renewed.



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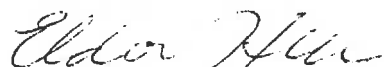
With regard to your contention that the building should be grandfathered and therefore not have to conform to the C.A.B.O.'s requirements. I have enclosed a copy of C.A.B.O. Section R-114 entitled Existing Installations. Note that it refers only to continuing an existing use. For additional guidance, I have referred to O.B.B.C. Section 4101:2-1-27, Changes in Use and Occupancy. I refer to this section only to establish the intent of codes in general with regard to changes in use. Note that the section requires compliance with the new use.

I have also checked the records for similar projects. On October 23, 1985, my predecessor Ron Sonnenberg issued Permit No. 01106 to Don Bergstedt for 826 Maple to change a single family dwelling into a two family dwelling. Requirement No. 12 on the Addendum to the permit stipulated that a drywall fire separation be applied to separation walls and ceilings. If you question this you might want to contact Mr. Bergstedt.

My ruling with regard to this matter is that the structure is existing as a one family dwelling. Therefore, if you wish to change it to a two family dwelling, the structure will need to comply with the requirements of a two family dwelling as specified by the C.A.B.O. Code.

If you wish to appeal my ruling, you may use the enclosed application.

Thank you for your cooperation,



Eldon Huber  
Building Inspector

# NAPOLÉON ZONING CODE

it is located. In any district, a single-family dwelling may be constructed on a lot of record regardless of the size of the lot.

## Sec. 151.31 NON-CONFORMING BUILDINGS AND USES

Any building, structure, or use which existed lawfully at the time of the adoption of this chapter, and which remains non-conforming shall be non-conforming upon adoption of this chapter, and may be continued subject to the following regulations.

### (A) MAY NOT BE EXTENDED

A non-conforming use may not be extended beyond the area of a building or premises which existed lawfully at the time of the adoption of this chapter.

### (B) MAY BE CHANGED

A non-conforming use may be changed to another non-conforming use of the same or greater restriction, provided the size or area of the structure or premises is not increased.

### (C) USE CANNOT BE CHANGED TO NON-CONFORMING USE

Whenever a non-conforming use has been changed to a use conforming to the district regulations, it shall not thereafter be changed to a non-conforming use.

### (D) NO BUILDING ERECTED ON NON-CONFORMING USE PREMISES

No building shall be erected upon any premises which is used for non-conforming purposes.

### (E) DISCONTINUANCE OF NON-CONFORMING USE

If the non-conforming use of a building or premises is discontinued for a period of two years, it shall not be renewed, and any subsequent use of the building or premises shall conform to the use regulations of the district in which such building or premises is located.

### (F) RESTORATION OF DAMAGED BUILDINGS

A non-conforming building or structure which is destroyed or damaged by fire or other calamity or act of God, to the extent that the cost of the restoration to the condition in which it was before the occurrence, shall exceed 50% of the building value before occurrence, shall not be restored unless the building or premises and the use thereof conform to all regulations of the district in which it is located.

### **One and Two Family Dwelling Code**

**R-111.1.2 Plumbing, mechanical and electrical: Rough inspection:** Commonly made prior to covering or concealment, before fixtures are set, and prior to framing inspection.

**R-111.1.3 Frame and masonry inspection:** Commonly made after the roof, masonry, all framing, firestopping, draftstopping and bracing are in place and after the plumbing, mechanical and electrical rough inspections are approved.

**R-111.1.4 Lath and/or wallboard inspection:** Commonly made after all lathing and/or wallboard interior is in place, but before any plaster is applied, or before wallboard joints and fasteners are taped and finished.

**R-111.1.5 Other inspections:** In addition to the called inspections above, the building department may make or require any other inspections to ascertain compliance with this code and other laws enforced by the building department.

**R-111.1.6 Final inspection:** Commonly made after the building is completed and ready for occupancy.

### **SECTION R-112 — PREFABRICATED CONSTRUCTION**

A certificate of approval by an approved agency shall be furnished with every prefabricated assembly, except where all elements of the assembly are readily accessible to inspection at the site. Placement of prefabricated assemblies at the building site shall be inspected by the building official to determine compliance with this code, and a final inspection shall be provided in accordance with Section R-111.1.6.

**NOTE:** Provisions for foundation systems and building service equipment connections necessary to provide for the installation of new manufactured homes on privately owned (nonrental) lots and existing manufactured homes to which additions, alterations or repairs are made are contained in Appendix C and shall be enforced only when specifically adopted by the jurisdiction.

### **SECTION R-113 — INSPECTION CARD**

The permit holder or his agent shall post the inspection record on the jobsite in an accessible and conspicuous place to allow the building official to make the required entries. The record shall be maintained by the permit holder until the final inspection has been made and approved.

### **SECTION R-114 — EXISTING INSTALLATIONS**

Buildings and structures in existence at the time of the adoption of this code may have their existing use continued if such use was legal at the time of the adoption of this code, provided such continued use is not dangerous to life.

## THE OHIO BASIC BUILDING CODE

**4101:2-1-27(C) Changes of use and occupancy:** A building or structure hereafter changed, in whole or in part, from one use group to another or to a different use within the same use group, shall not be occupied for the new use until the building conforms to the applicable provisions of this code for the new use and the certificate of use and occupancy shall have been issued by the building official for such changed portions.

**4101:2-1-27(D) Existing buildings:** Upon written request from the owner of an existing building or structure, the building official shall issue a certificate of use and occupancy, provided there are not violations of law or orders of the building official pending, and it is established after inspection and investigation that the alleged use of the building or structure has heretofore existed. This code shall not require the removal, alteration or abandonment of, or prevent the continuance of, the use and occupancy of a lawfully existing building or structure, unless such use is deemed to endanger public safety and welfare.

**4101:2-1-27(E) Temporary occupancy:** Upon the request of the holder of a permit, the building official may issue a temporary certificate of use and occupancy for a building or structure, or part thereof, before the entire work covered by the permit shall have been completed, provided such portion or portions may be occupied safely prior to full completion of the building or structure without endangering life or public welfare.

**4101:2-1-27(F) Contents of certificate:** When a building or structure is entitled thereto, the building official shall issue a certificate of use and occupancy. The certificate shall certify compliance with the provisions of this code, Chapters 3781. and 3791. of the Revised Code, and the purpose for which the building or structure may be used in its several parts. The certificate of use and occupancy shall specify: the use group, in accordance with the provisions of Article 3; the type of construction as defined in Article 4; and any special stipulations and conditions of the building permit. *Effective March 1, 1985*

### 4101:2-1-28 POSTING STRUCTURES

**4101:2-1-28(A) Posted use and occupancy:** Every building and structure and part thereof designed for Use Groups B, F, H, M, and S as defined in Article 3, shall be posted on all floors by the owner with a suitably designed placard in a form designated by the building official. It shall be securely fastened to the structure in a readily visible place, stating: the use group, the type of construction, the live load, and the occupant load.

**4101:2-1-28(B) Posted occupant load:** Every room or space constituting a place of assembly or education shall have the approved occupant load of the room or space posted in a conspicuous place, near the main exit from the room or space. The approved occupant load signs shall be installed and

together with his staff shall receive compensation for their services as determined by the City Council.

(B) The Building Commissioner and his authorized representatives, in the discharge of their official duties and upon proper identification, shall have authority to enter any building, structure, or premises at any reasonable time when a building permit has been obtained. (Ord. 1116, passed 12-17-73; amend. Ord. 64-85, passed 11-18-85)

#### § 150.04 BOARD OF BUILDING APPEALS.

(A) The Mayor shall provide for the organization and maintenance of a Board of Building Appeals. The board shall consist of 5 citizens of the city appointed by the Mayor. The appointed members shall be appointed for terms of 3 years, except that of the 5 members first appointed, one shall be appointed for a term of one year, 2 for the term of 2 years and 2 for terms of 3 years. Of the appointed members, all of whom shall be conversant with the light construction industry, one shall be a representative of the light construction industry, one shall be a registered engineer, one shall be a contractor, and 2 shall be representatives-at-large. No member shall act on any matter in which he has a financial interest. In the event of a vacancy on the board, the Mayor shall within 30 days appoint a new member who shall have the qualifications of the member he shall replace and who shall serve the balance of the unexpired term of the member. (Ord. 1180, passed 8-19-74)

(B) The Board shall organize by electing a chairman and vice-chairman who shall serve for a period of one year. The Building Commissioner or his representative shall serve as secretary who shall attend all meetings of the Board and shall provide such information, service, and assistance as it may require. A quorum shall consist of 3 members, and no official meeting shall be held unless a quorum is present at roll call. The affirmative vote of the majority present at a meeting shall be necessary to pass any resolution or make any decision.

(C) The board shall adopt rules and regulations of procedure, which it may, from time to time, change at its discretion; provided, that no rule or regulation shall be in conflict with any provision of the foregoing section. These rules and regulations shall fix the time and place of regular meetings and shall provide for special meetings, for appeal procedure and for such other matters as are pertinent to the operation of the board. Complete minutes

shall be kept of every meeting, setting forth all business transacted and decisions made. In case an appeal is adverse to the appellant, the minutes shall contain the reason therefor. All minutes shall be signed by the secretary and countersigned by the chairman or vice-chairman. A copy of the minutes shall be sent to the building commissioner and to every appellant who has an interest therein.

(D) For the purpose of carrying out the intent and purpose of this code, the board shall have the following powers and perform the following duties:

(1) To hear an appeal filed by any person or company adversely affected by a decision of the building commissioner in the enforcement of this code, and determine whether, in the opinion of the board, the decision of the building commissioner should be reversed, modified or affirmed. The board shall have the power and authority to require by resolution that the building commissioner modify, reverse, or enforce his or its decision.

(2) To formulate and report to the governing body from time to time recommendations for action by them upon such amendments to the code as the public health, safety, and the development of arts and sciences may require.

(3) To determine by rule or regulation, on application to it, whether any new type of material, method of construction, or equipment is equal to that required by the code, and to recommend the use of new material to be incorporated in the code, according to the Ohio Board of Building Standards, Item 2.1 B.

(E) An appeal from any decision of the building commissioner may be taken within 15 days from the date of the decision by paying the required fee of \$10 and filing with the building commissioner and with the board a notice of appeal, specifying the grounds therefor. The building commissioner shall transmit to the board papers upon which the action appealed was taken. (Ord. 1116, passed 12-17-73)

#### § 150.05 REGISTRATION FOR BUILDERS.

It shall be unlawful for any person, firm, or corporation to act or engage in the business of building construction, repair, removal, alteration, or demolition for others within the city unless they have registered as a builder. However, the owner of a building may carry on any of the work governed by the building section of this code without such certificate of registration, provided that the owner shall obtain a permit for any