

# Article 5

## Amendments, Appeals and Variances

### 500 Procedure for amendments of district changes

This Resolution may be amended by utilizing the procedures specified in Section 501 to Section 514, inclusive, of this Resolution and Section 519.12 of the Ohio Revised Code.

### 501 General

Whenever the public necessity, convenience, general welfare, or good zoning practices require, the Board of Township Trustees may by resolution, after receipt of recommendation thereon from the Zoning Commission and subject to the procedures provided by law, amend, supplement, change or repeal the regulations, restrictions, and boundaries or classification of property.

### 502 Initiation of zoning amendments

Amendments to this Resolution may be initiated in one of the following ways.

- A. By adoption of a motion by the Zoning Commission.
- B. By adoption of a resolution by the Board of Township Trustees.
- C. By the filing of an application by at least one (1) owner or lessee of property within the area proposed to be changed or affected by said amendment.

### 503 Contents of application for zoning map amendment

Applications for amendments to the Official Zoning Map adopted as part of this Resolution shall contain at least the following information.

- A. The name, address and phone number of applicant;
- B. A statement of the reason(s) for the proposed amendment;
- C. Present use;
- D. Present zoning district;
- E. Proposed use;
- F. Proposed zoning district;
- G. A vicinity map at a scale approved by the Zoning Administrator showing property lines of the property to be rezoned and all abutting properties; thoroughfares,

existing and proposed zoning, and such other items as the Zoning Administrator may require;

- H. A list of all property owners and their mailing addresses who are within, contiguous to, or directly across the street from the parcel(s) proposed to be rezoned and others that may have substantial interest in the case, except that addresses need not be included where more than ten (10) parcels are to be rezoned;
- I. A statement on the ways in which the proposed amendment relates to the comprehensive plan;
- J. A fee as established by Resolution of the Board of Township Trustees.

#### **504 Contents of application for zoning text amendment**

- A. The name, address, and phone number of the applicant;
- B. The proposed amendment to text in a form consistent with the existing Zoning Resolution;
- C. A statement of the reason(s) for the proposed amendment;
- D. A statement explaining the ways in which the proposed amendment relates to the comprehensive plan;
- E. A fee as established by Resolution of the Board of Township Trustees.

#### **505 Transmittal to Zoning Commission**

Immediately after the adoption of a Resolution by the Board of Township Trustees or the filing of an application by at least one (1) owner or lessee or property, said resolution or application shall be transmitted to the Commission.

#### **506 Submission to County Planning Commission**

Within five (5) days after the adoption of a motion by the Commission, transmittal of a Resolution by the Board of Township Trustees, or the filing of an application by at least one (1) owner or lessee, the Zoning Commission shall transmit a copy of such motion, resolution, or application, together with the text and/or map pertaining to the case in question, to the County Planning Commission. The County Planning Commission shall recommend the approval or denial of the proposed amendment or the approval of some modification thereof and shall submit such recommendation to the Zoning Commission. Such recommendation shall be considered at the public hearing held by the Zoning Commission.

## **507 Submission to Director of Transportation**

Before any zoning amendment is approved affecting any land within three hundred (300) feet of the center line of a proposed new highway or highway for which changes are proposed as described in the certification to local officials by the Director of Transportation, or within a radius of five hundred (500) feet from the point of intersection of said centerline with any public road or highway, the Commission shall give notice, by registered or certified mail, to the Director of Transportation. The Zoning Commission may proceed as required by law; however, the Board of Township Trustees shall not approve the amendment for one hundred twenty (120) days from the date of the notice is received by the Director of Transportation. If the Director of Transportation notifies the Board of Township Trustees that he shall proceed to acquire the land needed, then the Board of Township Trustees shall refuse to approve the rezoning. If the Director of Transportation notifies the Board of Township Trustees that acquisition at this time is not in the public interest or upon the expiration of the one hundred twenty (120) day period or any extension thereof agreed upon by the Director of Transportation and the property owner, the Board of Township Trustees shall proceed as required by law.

## **508 Public hearing by Zoning Commission**

The Zoning Commission shall schedule a public hearing after the adoption of their motion, the transmittal of a resolution from the Board of Township Trustees, or the filing of an application for zoning amendment. Said hearing shall be not less than twenty (20) nor more than forty (40) days from the date of adoption of such motion, transmittal of such resolution, or filing of such application.

## **509 Notice of public hearing in newspaper**

Before holding the public hearing as required in Section 508, notice of such hearing shall be given by the Zoning Commission by at least one (1) publication in one (1) or more newspapers of general circulation in the township at least ten (10) days before the date of said hearing. This notice shall set forth the time and place of the public hearing, the nature of the proposed amendment, and a statement that after the conclusion of such public hearing the matter will be referred to the Board of Township Trustees for further determination.

## **510 Notice to property owners by Zoning Commission**

If the proposed amendment intends to rezone or redistrict ten (10) or less parcels of land as listed on the tax duplicate, written notice of the hearing shall be mailed by the

Zoning Commission by first-class mail, at least ten (10) days before the date of the public hearing, to all owners of property within, contiguous to, and directly across the thoroughfare from such area proposed to be rezoned or redistricted to the address of such owners appearing on the list furnished by the applicant in Section 503 H of this Resolution, or the County Auditor's current tax list or the Treasurer's mailing list and/or such other list or lists that may be specified by the Board of Township Trustees. The failure to deliver the notice, as provided in this section, shall not invalidate any such amendment. The notice shall contain the same information as required of notices published in newspapers as specified in Section 509.

### **511 Recommendation by Zoning Commission**

Within thirty (30) days after the public hearing required by Section 508, the Zoning Commission shall recommend to the Board of Township Trustees that the amendment be granted as requested, or it may recommend a modification of the amendment requested, or it may recommend that the amendment be not granted. The written decision of the Zoning Commission shall indicate the specific reason(s) upon which the recommendation is based, to include the basis for their determination that the proposed amendment is or is not consistent with the comprehensive plan.

### **512 Public hearing by Board of Township Trustees**

Within thirty (30) days from the receipt of the recommendation of the Zoning Commission, the Board of Township Trustees shall hold a public hearing. Notice of such public hearing in a newspaper of general circulation shall be given by the Board of Township Trustees as specified in Section 509.

### **513 Action by Board of Township Trustees**

Within twenty (20) days after the public hearing required by Section 512, the Board of Township Trustees shall either adopt or deny the recommendation of the Zoning Commission or adopt some modification thereof. In the event the Board of Township Trustees denies or modifies the recommendation of the Commission, the unanimous vote of the Board of Township Trustees is required.

### **514 Effective date and referendum**

Such amendment adopted by the Board of Township Trustees shall become effective thirty (30) days after the date of such adoption unless within thirty (30) days after the adoption of the amendment there is presented to the Board of Township Trustees a petition, signed by a number of qualified voters residing in the unincorporated area of the township or part thereof included in the zoning plan equal to not less than eight (8) percent of the total vote cast for all candidates for Governor in such area at the last preceding general election at which a Governor was elected, requesting the Board of

Township Trustees to submit the amendment to the electors of such area, for approval or rejection, at the next primary or general election.

The petition shall be filed, accompanied by an appropriate map of the area affected by the zoning proposal, with the Board of Township Trustees, which shall then transmit the petition within two (2) weeks of its receipt to the Board of Elections, which shall determine the sufficiency and validity of the petition. The only responsibility of the Township Board of Trustees is to transmit said petition to the Board of Elections.

No amendments for which such referendum vote has been requested shall be put into effect unless a majority of the votes cast on the issue is in favor of the amendment. Upon certification by the Board of Elections that the amendment has been approved by the voters it shall take immediate effect.

## **520 Appeals**

Appeals to the Board of Zoning Appeals concerning interpretation or administration of this Resolution may be taken by any person aggrieved or by any officer or bureau of the legislative authority of the Township affected by any decision of the Zoning Administrator. Such appeal shall be taken within twenty (20) days after the decision by filing, with the Zoning Administrator and with the Board of Zoning Appeals, a notice of appeal specifying the grounds upon which the appeal is being taken. The Zoning Administrator shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which action appealed from was taken.

## **521 Stay of Proceedings**

An appeal, stays all proceedings in furtherance of the actions appealed from, unless the Zoning Administrator from whom the appeal is taken certifies to the Board of Zoning Appeals after the notice of appeal is filed with him that by reason of facts stated in the application, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by a court of record on application, on notice to the Zoning Administrator from whom the appeal is taken on due cause shown.

## **530 Variances**

A variance is a modification by appeal of the strict terms of the relevant regulations, authorized by the Board of Zoning Appeals, where such modification will not be contrary to the public interest and where owing to conditions peculiar to the property and the result of the action of the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship. No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for issuance of a variance. Variances shall not be granted on the grounds of convenience

or profit, but only where strict application of the provisions of this Resolution would result in unnecessary hardship.

## **531 Application and standards for variances**

Except as otherwise permitted in this Resolution, no variance in the strict application of the provisions of this Resolution shall be granted by the Board of Zoning Appeals unless the Board shall find that the written application for the requested variance contains all of the following requirements:

- A. Name, address and telephone number of applicant(s).
- B. Legal description of property.
- C. Description or nature of variance requested.
- D. A fee as established by Resolution.
- E. Narrative statements establishing and substantiating that the variance conforms to the following standards.
  1. The granting of the variance shall be in accord with the general purpose and intent of the regulations imposed by this Resolution on the district in which it is located, and shall not be injurious to the area or otherwise detrimental to the public welfare.
  2. The granting of the variance will not permit the establishment of any use which is not otherwise permitted in the district.
  3. There must exist special circumstances or conditions, fully described in the findings, applicable to the land or buildings for which the variance is sought, which are peculiar to such land or buildings in the area, and which are such that the strict application of the provisions of this Resolution would deprive the applicant of the reasonable use of such land or building. Mere loss in value shall not justify a variance; there must be deprivation of beneficial use of land.
  4. There must be proof of hardship created by the strict application of this Resolution. It is not sufficient proof of hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created; nor can it be established on this basis by one who purchases with or without knowledge of the restrictions; it must result from the application of this Resolution; it must be suffered directly by the property in question; and evidence of variances granted under similar circumstances need not be considered.

5. The granting of the variance is necessary for the reasonable use of the land or building, and the variance as granted is the minimum variance that will accomplish this purpose.
6. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values of the adjacent area.
7. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures or buildings in the same district.

### **532 Additional conditions and safeguards**

The Board may further prescribe any conditions and safeguards that it deems necessary to insure that the objective of the regulations or provisions to which the variance applies will be met. 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 punishable violation under this Resolution.

### **533 Term of variance**

No order of the Zoning Board of Appeals granting a variance shall be valid for a period of longer than twelve (12) months from the date of such order unless the building permit or zoning approval is obtained within such period, and the erection or alteration of a building is started or the use is commenced within such period. Construction is to be completed within twenty-four (24) months of the date of issue of the permit.

### **534 Authorized variance**

Variances from the regulations of this Resolution shall not be granted unless the Board makes specific findings of fact, based directly on the particular evidence presented to it, which support conclusions that the standards and conditions imposed in Section 531, and Section 532, if applicable, have been met by the applicant. Variances may be granted as guided by the following:

- A. To permit any yard or setback less than the yard or setback required by the applicable regulations.
- B. To permit the use of a lot or lots for a use otherwise prohibited solely because of the insufficient area or width of the lot or lots, but generally the respective area and width of the lot or lots should not be less than eighty (80) percent of the required area and width.

- C. To permit the same off-street parking facility to qualify as required facilities for two or more uses, provided that substantial use of such facility by each user does not take place at approximately the same hours of the same days of the week.
- D. To reduce the applicable off-street parking or loading facilities required, but generally by not more than thirty (30) percent of the required facilities.
- E. To allow for the deferment of required parking facilities for a reasonable period of time, such period of time to be specified in the variance.
- F. To increase the maximum distance that required parking spaces are permitted to be located from the use served, but generally not more than forty (40) percent.
- G. To increase the maximum allowable size or area of signs on a lot, but generally by not more than twenty-five (25) percent.
- H. To increase the maximum gross floor area of any use so limited by the applicable regulations, but generally not more than twenty-five (25) percent.

## **540 Conditional uses**

A Conditional Use is a use, other than a principally permitted use within a district requiring a conditional use permit and approval of the Board of Zoning Appeals.

In recent years, the characteristics and impacts of an ever-increasing number of new and unique uses, together with the broadening of numerous conventional uses, have fostered the development of more flexible regulations designed to accommodate these activities in a reasonable and equitable manner, while safeguarding both the property rights of all individuals and the health, safety and general welfare of the community. Toward these ends, it is recognized that this Resolution should provide for more detailed evaluation of each use conditionally permissible in a specific district with respect to such considerations as location, design, size, method(s) of operation, intensity of use, public facilities requirements, and traffic generation. Accordingly, conditional use permits shall conform to the procedures and requirements of Section 541 to Section 545 of this Resolution.

## **541 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 Zoning Administrator, who shall, within seven (7) days, transmit it to the Board of Zoning Appeals. Such application at a minimum shall contain the following information:

- A. Name, address and telephone number of the applicant.

- B. Legal 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, landscaping features and such other information as 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 adjacent to property in question.
- I. A fee as established by Resolution.
- J. A narrative addressing each of the applicable criteria contained in Section 542.

## **542 General standards for all conditional uses**

In considering an application for a conditional use the Board shall give due regard to the nature and condition of all adjacent uses and structures; and in authorizing a conditional use the Board may impose such requirements and conditions with respect to location, construction, maintenance and operation for the particular conditional use as the Board may deem necessary for the protection of adjacent properties and the public interest.

In addition to the above and to the specific requirements for conditionally permitted uses as specified elsewhere in this Resolution, the Board shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing such use at the proposed location:

- A. Is in fact a conditional use as established under the provisions of this Resolution 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 Township's comprehensive plan and/or the Zoning Resolution.

- 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 planned 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 services.
- 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 thoroughfares.
- I. Will not result in the destruction, loss or damage of natural, scenic or historic features of major importance.

### **543 Action on conditional use applications**

Within thirty (30) days after the date of the public hearing required in Section 550, the Board shall take one of the following actions.

- A. Approve issuance of the conditional use 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 supplementary conditions and safeguards as specified in Section 544. Upon making an affirmative finding, the Board shall direct the Zoning Administrator to issue a conditional use for such use which shall list all conditions and safeguards specified by the Board 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.

- C. Make a written finding that the application is denied, such finding specifying the reason(s) for disapproval.

#### **544 Violation of conditions**

Any violation of 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 Resolution.

#### **545 Expiration of conditional use permit**

A conditional use permit shall be deemed to authorize only one (1) particular conditional use, and said permit shall automatically expire if such conditionally permitted use has not been instituted or utilized within one (1) year of the date that the Board approved the conditional use, or if for any reason such use shall be discontinued for more than two (2) years.

#### **550 Public hearing by the Board of Zoning Appeals**

The Board of Zoning Appeals shall hold a public hearing within thirty (30) days after the receipt of an application for an appeal, variance or conditional use from the Zoning Administrator or an applicant.

#### **551 Notice of public hearing in newspaper**

Before conducting the public hearing required in Section 550, notice of such hearing shall be given in one (1) or more newspapers of general circulation in the Township at least ten (10) days before the date of said hearing. The notice shall set forth the time and place of the public hearing and the nature of the proposed action.

#### **552 Notice of parties in interest**

Before conducting the public hearing required in Section 550, written notice of such hearing shall be mailed by first-class mail, at least ten (10) days before the date of said hearing, to all parties in interest. The notice shall contain the same information as required of notices published in newspapers as specified in Section 551.

## **553 Action by Board of Zoning Appeals**

Within thirty (30) days after the public hearing required in Section 550, the Board of Zoning Appeals shall approve, approve with supplementary conditions as specified in Section 532, or disapprove the request for appeal or variance. The Board of Zoning Appeals shall further make a finding in writing that the reasons set forth in the application justify the granting of the variance that will make possible a reasonable use of the land, building or structure. Appeals from Board decisions shall be made in the manner specified in Section 440.

## **554 Rules where uncertainty may arise**

Where uncertainty exists with respect to the boundaries of the various districts as shown on the maps accompanying and made a part of this Resolution, the following rules apply:

- A. The district boundaries are the centerline of streets and alleys, unless otherwise shown, and where the districts designated on the maps accompanying and made a part of this Resolution are bounded approximately by street or alley centerline, such centerline shall be construed to be the boundary of the districts.
- B. Where the district boundaries are not otherwise indicated, and where the property has been or may hereafter be divided into blocks and lots, the districts' boundaries shall be construed to be the lot lines, and where the district designated on the maps accompanying and made a part of this Resolution are bound approximately by lot lines, the lot line shall be construed to be the boundary of the districts unless the boundaries are otherwise indicated on the maps.
- C. The district boundary lines of un-subdivided property on the maps accompanying and made a part of this Resolution shall be determined by dimensions or the use of the scale appearing on the map.