

The Board of Trustees of Danbury Township, County of Ottawa, Ohio, met in regular session at 6:00 p.m., on August 12, 2015, at the Danbury Township Hall, 5972 E. Port Clinton Eastern Road, Marblehead, Ohio 43440, with the following members present:

Ms. Dianne Rozak; Mr. Charles Scott; Mr. David Hirt

Mr./ Ms. Rozak introduced the following resolution and moved its adoption:

RESOLUTION NO. 17 - 2015

**A RESOLUTION ADOPTING TEXT AMENDMENTS, TO THE  
ZONING RESOLUTION RELATED TO ARTICLE 6  
DEVELOPMENT PROCEDURES AND ARTICLE 7  
ADMINISTRATION, APPEALS AND ENFORCEMENT**

WHEREAS, on June 24, 2015 the Board of Trustees, in accordance with Ohio Revised Code section 519.12(A)(1) initiated, by passage of a resolution #15-2015, the following amendments to the Danbury Township Zoning Resolution:

- Clarify that Zoning Commission and Board of Zoning Appeals meetings are to be held monthly; and
- Establish a reasonable period of time an application submitted to the Board of Zoning Appeals shall be heard; and
- Modify any sections quoting the Ohio Revised Code are as worded in the Ohio Revised Code; and
- Establish criteria in which Zoning Commission and Board of Zoning Appeals members are required to recuse themselves from participation in hearing proceedings before their respective Commission or Board in which they sit; and
- Amend Section 7.9 Nonconformities per legal counsel's advisement.

WHEREAS, said certification of the Trustees Resolution #15-2015, was forwarded to the Zoning Commission on July 1, 2015 where they scheduled a Special Meeting for July 22, 2015, and

WHEREAS, said text amendments were forwarded to the Ottawa County Regional Planning Commission (OCRPC) July 2, 2015 and considered by the Ottawa County Regional Planning Commission (OCRPC) on July 21, 2015 where the Commission recommended unanimous approval of said text amendments as presented; and

WHEREAS, the Danbury Township Zoning Commission held a public hearing on July 22, 2015 and by motion and vote, the Zoning Commission unanimously recommended approval of said text amendments with a minor modification; and

WHEREAS, the Board of Trustees held a public hearing on August 12, 2015 and, at the conclusion of the public hearing, voted to accept the recommendation of the Zoning Commission as set out in Exhibit A as attached hereto.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Trustees of Danbury Township, Ottawa County, Ohio:

- 1) The Board finds that:
  - a. The proposed amendment will clarify the intent of the Resolution.
  - b. The proposed amendment will better implement the intent of the Resolution.
- 2) The Board does hereby adopt the amendment to the Danbury Township Zoning Resolution attached hereto as Exhibit A; and
- 3) That it is hereby found and determined that all formal actions of this Board concerning and relating to the passage of this Resolution were taken in an open meeting of this Board, and that all deliberations of this Board and of any of its committees that resulted in such formal action were taken in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code; and
- 4) That this Resolution shall be effective at the earliest date allowed by law.

Mr./ Ms. Scott seconded the Resolution, and the roll being called upon the question of its adoption, the vote resulted as follows:

Vote Record: Ms. Rozak Yes Mr. Scott Yes Mr. Hirt Yes

**ADOPTED** this 12<sup>th</sup> day of August, 2015.

Attest:

Shelley Seamon  
Fiscal Officer

Board of Trustees  
Danbury Township  
Ottawa County, Ohio

Charles B. Scott  
Charles B. Scott, President

Dianne Rozak

David Hirt  
David Hirt

#### AUTHENTICATION

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution duly passed by this Board of Trustees in session this 12th day of August, 2015 and filed with the Danbury Township Fiscal Officer.

Shelley Seamon  
Shelley Seamon  
Danbury Township Fiscal Officer

**DANBURY TOWNSHIP ZONING COMMISSION  
REQUEST FOR ZONING AMENDMENT**

Danbury Township, Ottawa County, Ohio

APPLICATION NO: #2015 – 075

During a regular meeting of the Danbury Township Board of Trustees held June 24, 2015, Resolution #15-2015 was introduced by Ms. Rozak and seconded by Mr. Hirt to initiate the following Text Amendments in accordance with ORC §519.12:

- *Clarify that Zoning Commission and Board of Zoning Appeals meetings are to be held monthly; and*
- *Establish a reasonable period of time an application submitted to the Board of Zoning Appeals shall be heard; and*
- *Modify any sections quoting the Ohio Revised Code are as worded in the Ohio Revised Code; and*
- *Establish criteria in which Zoning Commission and Board of Zoning Appeals members are required to recuse themselves from participation in hearing proceedings before their respective Commission or Board in which they sit; and*
- *Amend Section 7.9 Nonconformities per legal counsel's advisement.*

Vote resulted as follows:        Ms. Rozak – YES        Mr. Scott – YES        Mr. Hirt – YES .

**Applicant's Name:**    Danbury Township  
                                  5972 E. Port Clinton Eastern Road  
                                  Marblehead, Ohio 43440

**Fee:**                        Not Applicable

**Date Filed:**            June 25, 2015

**Request:**                Text Amendments to Article 6 and Article 7 regarding Zoning Commission and Board of Zoning Appeals meetings and participation, correct erroneously quoted language from the Ohio Revised Code, and amend nonconformities language per advisement of legal counsel.

**Ottawa County Regional Planning Commission Recommendation:**

Per 07.22.15 letter from M. Messa, the Regional Planning Commission voted unanimously to recommend approval as presented to the Danbury Zoning Commission.

Date of Hearing: July 21, 2015 .

**Zoning Commission Action:**

Mrs. Radabaugh made motion to approve as modified  
and based on Decision Criteria iii and iv. Mr. Dress  
seconded the motion

Date of Hearing: July 22, 2015

Vote resulted as follows: Ms. Kopanski - Yes; Mrs. Radabaugh - Yes; Mr. Dress - Yes;  
Mr. Bauders - Yes; Mr. Pitzer - Yes; Ms. Porter - Abs Motion carried.

Jodi Kyab  
Chair

Katherine Radabaugh  
Vice-Chair

Heather  
Secretary

John Pitzer  
Member

David M. Hirt  
Member

**Board of Trustees Action:**

Mrs. Rozak motioned to approve as presented. Mr. Scott  
2<sup>nd</sup> the motion. Refer to Resolution 17-2015

Date of Hearing: August 12, 2015

Vote resulted as follows: Mr. Scott - Yes; Mrs. Rozak - Yes; Mr. Hirt - Yes;

Dianne M. Rozak  
Dianne M. Rozak

David M. Hirt  
David M. Hirt

Charles B. Scott  
Charles B. Scott, President

*Article 6.0*  
*Development Procedures*

**Article 6.0      Development Procedures**

- 6.1      Zoning Certificate/Permit Approval
- 6.2      Conditional Zoning Certificate
- 6.3      Board of Zoning Appeals Review and Approval Procedures

# 6.0 Development Procedures

## 6.1 ZONING CERTIFICATE/PERMIT APPROVAL

### 1. General Standards

- A. It shall be unlawful for an owner to use or to permit the use of any structure, building or land, or part thereof, hereafter created, erected, converted or enlarged, wholly or partly, until a zoning certificate/permit shall have been issued by the Zoning Inspector. It shall be the duty of the Zoning Inspector to issue a certificate/permit, provided he is satisfied that the structure, building or premises, and the proposed use thereof conform with all the requirements of this Resolution. No certificate/permit for excavation, construction or reconstruction shall be issued by the Zoning Inspector unless the plans, specifications and the intended use conform to the provisions of this Resolution.
- B. Upon written request from the owner or tenant, the Zoning Inspector shall issue a zoning certificate/permit for any building or premises existing at the time of enactment of this Resolution certifying, after inspection the extent and kind of use made of the building or premises and whether such use conforms to the provisions of this Resolution. No charge shall be made for issuing a zoning certificate/permit in accordance with this paragraph.
- C. Uses Exempt From Zoning Certificates/Permits. This zoning resolution is effective to the full extent allowed by law. Certain laws limit the effect of zoning resolutions. These laws are contained in Sections 519.21 and 519.211 of the Ohio Revised Code.

However, these code sections have exceptions wherein zoning resolutions are effective. These exceptions are noted as Sections 519.21(B), 519.211(B) and 519.211(C) of the Ohio Revised Code. This zoning resolution is effective in all of the noted exceptions areas and they are incorporated herein by reference. Exceptions, authorized by future amendments to the sections by the Ohio legislature shall also be effective for purposes of this zoning resolution. In general, Sections 519.21 and 519.211 prohibit regulation of certain Agricultural uses, public utilities, railroads, liquor sales,

oil and gas production, and telecommunication towers.

### 2. Conditions under which Certificates/Permits are Required

A zoning certificate/permit shall be required for any of the following, except as herein provided:

- A. Construction or enlargement of a building, including accessory buildings.
- B. Change in use of an existing building or accessory building to a use of a different classification.
- C. Occupancy and/or use of land.
- D. Change in the use of land to a use of a different classification.
- E. Any change from one (1) nonconforming use to another.
- F. A zoning certificate may be issued upon request for any lawful nonconforming uses of land or buildings created by adoption of this Resolution or any amendments thereto.
- G. Marinas and/or marina expansions as defined in Article 4 of this Resolution or any amendments thereto.
- H. Permanent, portable and identification signs as defined in Article 5.

### 3. Application and Issuance of Zoning Certificate/Permit

- A. Written application shall be made for a zoning certificate/permit for the construction of a new building or the enlargement of an existing building. Said certificate/permit shall be issued within ten (10) days after a written request for the same has been made to the Zoning Inspector or his agent, provided such construction or alteration is in conformity with the provisions of this Resolution.
- B. Written application for a zoning certificate/permit for the use of vacant land, or for a change in the use of land or of a building, or for a change in a nonconforming use, as herein provided, shall be made to the Zoning Inspector. If the proposed use is in conformity with the provisions of this Resolution, the certificate/permit therefore shall be issued within sixteen (16) days after the application for same has been made.
- C. Every application for a zoning certificate/permit shall be accompanied by a plot plan

and such other plans as may be necessary to show the location and type of buildings to be erected or to be made.

- i. Each plan shall show:
  - a. The street providing access to the lot and the exact location of the lot in relation to the nearest cross street.
  - b. The name of the concerned lot plan, if any, and the lot numbers of the concerned and abutting properties.
  - c. The actual dimensions of the lot, the yard and other open space dimensions thereof, and the location and size of any existing structure thereon.
  - d. The location and size of the proposed structure and/or the proposed enlargement of the existing structure.
  - e. Any other information which in the judgment of the Zoning Inspector may be necessary to provide for the enforcement of this Resolution.
- ii. Each plan shall bear statements declaring:
  - a. That no part of the land involved in the application has been previously used to provide required yard space or lot area for another structure or septic system.
  - b. Which abutting land was formerly that of the owner of the land involved in the application, and, if any, the approximate date of title transfer.
- iii. Where complete and accurate information is not readily available from existing records, the Zoning Inspector may require the applicant to furnish a survey of the lot by a registered engineer or surveyor.
- iv. Each property owner or authorized agent may be required to attest to the correctness of the statements and data furnished with the application. The certificate/permit will be issued based on the attestation if all other requirements of the Resolution are met.

- v. A file of such applications and plans shall be kept in the office of the Zoning Inspector.

4. Period of Validity

A zoning certificate/permit shall be valid for a period of one (1) year from the date of issuance by the Zoning Inspector. If substantial progress is not made within one (1) year, the applicant must reapply for a new zoning certificate/permit. An extension may be issued by the Zoning Inspector if due cause is shown.

5. Fees

- A. A fee, as established by the Board of Township Trustees, shall accompany each application for a zoning certificate/permit.
- B. The Zoning Inspector shall forthwith deposit all fees with the Township Fiscal Officer who shall credit such fees to the credit of the Zoning Fund of the Township.
- C. A record of all zoning certificates/permits shall be kept on file in the office of the Zoning Inspector or his agent and copies shall be furnished upon request at cost to any person having proprietary or tenancy interest in the building or land affected.

6.2 CONDITIONAL ZONING CERTIFICATE:

The Board of Zoning Appeals shall have the duty to hear and decide applications for conditional zoning certificates where they are permitted in Article 3 of this resolution. It is recognized that an increasing number of new kinds of uses are appearing daily and that experience with some of the more conventional uses call for a more flexible procedure so that these uses might be accommodated in the Township. Due to the peculiar nature of some uses, it is felt that each use should be given more detailed consideration as it relates to location, design, size, method of operation, traffic movements, concentration of population, and the kinds of public facilities and services it requires.

- 1. **Requirements for Issuance of Conditional Zoning Certificates.** The Board of Zoning Appeals shall determine that the general standards pertinent to each conditional use indicated herein shall be satisfied by the establishment and operation of the proposed conditional use. The Board of Zoning Appeals may also impose such additional conditions and safeguards as it deems necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of this Resolution will be

observed, including specified limitations as to future expansion.

The Board of Zoning Appeals has no obligation to approve a Conditional Use. This zoning resolution assumes that the uses listed as Conditional Uses are not appropriate unless an applicant proves that the use will not be detrimental to the public health, safety, or general welfare of the Township or the neighborhood in which it is proposed. Applicants shall prove that potential negative impacts of elements such as location, size and extent of facilities and operations, site design, traffic generation, site access, and potential impact upon public facilities will be adequately addressed.

2. **General Requirements.** The Board of Zoning Appeals shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence that such use in the proposed location:

- A. Will be harmonious with and in accordance with the general objectives or with any specific objective of a comprehensive plan;
- B. 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 a use will not change the essential character of the same area;
- C. Will not be hazardous or disturbing to existing or future neighboring uses;
- D. Will not be detrimental to property in the immediate vicinity or to the community as a whole;
- E. Will be served adequately by essential public facility and services;
- F. Will have vehicular approaches to the property which shall be so designated as not to create an interference with traffic on surrounding public/private streets or roads.
- G. In considering an application for conditional use, the Board shall give due regard to the nature and condition of all adjacent uses and structure.

3. **Approval, Expiration & Revocation.**

- A. An approved conditional use will be for a period of one year provided substantial progress and completion is made, unless an extension has been granted by the

Board. A maximum of two (2), six (6) months extensions are allowed if the scope of the approval has not changed and the proposed use and site plan still satisfy the decision standards.

- B. Failure to complete or make substantial progress on the approved use shall result in the expiration of its authorization and require a new application.
- C. Zoning permits shall not be issued unless the plans substantially conform to those approved by the Board of Zoning Appeals, including conditions.
- D. A Conditional Use permit shall be valid and run with the land, provided substantial progress and completion is made, only for the specific use and location approved and in accordance with any conditions approved.
- E. A Conditional Use Permit shall automatically expire if the Conditional Use ceases operation for more than one year.
- F. A Conditional Use Permit may be revoked by the Board of Zoning Appeals if the existing Conditional Use Permit fails to meet one of the following requirements:
  - i. The conditions of approval are not met or maintained.
  - ii. The continuance of the conditional use would pose a substantial risk to the public health, safety and welfare.

Notification will be provided to all who are entitled to such notice.

4. **Modifications to a Conditional Use.** Modifications shall be classified as a minor or major modification based on the following:

- A. Minor Modification:
  - i. Does not change the use or density to a more intense use or density than permitted by the approved plan; and
  - ii. Does not change the location or amount of land designated for a specific land use; and
  - iii. Are of a magnitude that will not substantially alter the appearance of the use from off of the site; and
  - iv. Will not substantially or detrimentally affect the provision of public services to the site or general vicinity; and

- v. Will not substantially or detrimentally increase potential demand on public or private utilities; and
  - vi. Are not of a scope, scale, or character, that would cause a negative impact on adjoining properties and neighborhood; and
  - vii. Are not contrary to and in no way diminish the intent of the originally approved permit.
- B. Major Modification:
- i. An increase in density or intensity; or
  - ii. Changes to the property or project boundaries; or
  - iii. Anything not classified as a minor modification above.
  - iv. A major modification requires an entirely new Conditional Use application (including the fee), according to the provisions of this section.
- C. **Review of Modifications.** If an applicant proposes to modify an approved Conditional Use the applicant shall submit the proposed modifications to the Zoning Inspector, supplemented with a written statement describing the modifications. A Minor Modification may be reviewed administratively and approved by both the Zoning Inspector and Board of Zoning Appeals Chair. Administrative approvals shall be clearly documented and made part of the original Conditional Use permit on file and placed on the Board of Zoning Appeals agenda as an informational item. Any changes to a Conditional Use that are not approved by the Zoning Inspector or Board of Zoning Appeals shall constitute a violation of the Zoning Code.

The applicant shall supply the necessary names and addresses of property owners within, contiguous to, and directly across the street of the property in question to the Township Zoning Inspector. The names and addresses shall be obtained from the County Auditor's current tax list or the Treasurer's mailing list. The failure to deliver all of the property owners' names and addresses will not invalidate the action taken by the Board of Zoning Appeals, ~~but may result in revocation of the zoning permit upon request by a party who was not properly notified.~~

- 2. The Board shall ~~fix a reasonable time for the~~ **hold a** hearing of an appeal, variance, conditional use, or special exception, giving at least ten (10) days public notice thereof in a newspaper of general circulation in the Township and at least ten (10) days notice to parties having proprietary interest in land within, contiguous to, and directly across the street from the property involved, and decide upon the appeal, variance, conditional use, or special exception **application** within ~~a reasonable time~~ **30 days** after it is submitted. At this hearing, any party may appear in person or by attorney.

The Board shall hear any owner of property adjacent to the lot for which the granting of any zoning permit is pending, and shall also hear any other parties having substantial interest as determined by the Board. The Board may request the attendance of witnesses and may require the production of documents, under such regulations as it may establish.

The Board may also call upon the various officials of the County for assistance and may also make use of such consultants as the Board deems necessary.

- 3. Upon the day for hearing any application or appeal, variance, conditional use, or special exception, the Board may adjourn the hearing in order to ~~permit the obtaining of~~ **obtain** additional information, or to cause ~~such~~ further notice as it deems proper to be served upon such other property owners as it decides may be substantially interested in the appeal, variance, conditional use, or special exception. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the time of resumption of said hearing unless the Board so decides.

The Board shall finalize the decision on all appeals, variances, conditional uses, or special exceptions at their next regularly scheduled

**6.3 BOARD OF ZONING APPEALS REVIEW AND APPROVAL PROCEDURES**

- 1. Applications for appeals, variances, conditional uses, or special exceptions shall be filed with the zoning inspector upon forms and accompanied by such data and information as prescribed by the township. A fee as determined by the Board of Township Trustees shall be paid upon the filing of each application for the purpose of defraying the costs of the proceedings.

monthly meeting. If such meeting has been cancelled, then a special meeting shall be called for the purpose of approving meeting minutes and signing the Decision sheets.

A certified copy of the Board's decision shall be transmitted to all parties in interest. Such decision shall be binding upon ~~and observed by~~ the Zoning Inspector ~~and observed by him~~, and ~~he~~ **Zoning Inspector** shall incorporate the terms and conditions of the same in the permit to the applicant or appellant, whenever a permit is authorized by the Board.

In exercising their duties to hear an appeal, variance, conditional use, or special exception, the Board may reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination appealed from, and ~~shall~~ **may** make such order, requirement, decision or determination as in its opinion ought to be made on the premises; and to that end, shall have all powers of the Zoning Inspector from whom the appeal is taken.

4. The Board shall keep minutes of its proceedings, 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 Board of Trustees and shall be a public record.
5. Any party adversely affected by a decision of the Board may appeal to the Court of Common Pleas as permitted by law.
6. No new application for a variance or Conditional Use that has once been denied in whole or in part by the BZA shall be submitted again to the BZA for a decision, unless new facts, material issues or substantial changes have been made in the proposal that formed the basis of the case.

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*Article 7.0*  
*Administration, Appeals and*  
*Enforcement*

<b>Article 7.0</b>	<b>Administration, Appeals and Enforcement</b>
7.1	Duties of Zoning Inspector
7.2	Ordinance Interpretation
7.3	Violations
7.4	Penalties
7.5	Zoning Commission
7.6	Procedure for Change in Zoning Districts
7.7	Application Fees
7.8	Board of Zoning Appeals Organization and Procedures
7.9	Non-Conforming Uses

# 7.0 Administration, Appeals, and Enforcement

## 7.1 DUTIES OF ZONING INSPECTOR

1. It shall be the duty of the Township Zoning Inspector, who shall be appointed by the Board of Trustees, to enforce this Resolution. It shall also be the duty of all officials and employees of the township to assist the Zoning Inspector by reporting to him upon new construction, reconstruction, or land uses.
2. Appeal from the decision of the Zoning Inspector may be made to the Board of Appeals, as provided herein.

## 7.2 ORDINANCE INTERPRETATION

1. In interpretation and application, the provisions of this Resolution shall be held to be minimum requirements adopted for the promotion of public health, safety, morals, comfort, and general welfare.
2. In all districts minimum lot areas have been established for dwelling lots. It should be noted that in some cases, the Board of Health or other agencies may require greater lot areas than the minimum established herein based upon whether the lots are served by community water and/or community sewage treatment facilities.
3. Nothing herein shall repeal, abrogate, annul, or in any way impair or interfere with any provision of law or any rules or regulations, other than zoning regulations, adopted or issued pursuant to law relating to the construction and use of building premises.
4. Where this Resolution imposes a greater restriction upon the use of buildings or requires larger yards than are imposed or required by other provisions of law, rules, regulations, covenants, or agreements, the provisions of this Resolution shall control, but nothing herein shall interfere with, abrogate, or annul any easements, covenants, deed restrictions, county requirements, or agreements between parties which imposes restrictions greater than those imposed by this Resolution.

## 7.3 VIOLATIONS

1. Any certificate issued upon a false statement of any fact which is material to the issuance thereof shall be void. Whenever the fact of such false statement shall be established to the satisfaction of the zoning inspector, the certificate shall be revoked by notice in writing

to be delivered to the holder of the void certificate upon the premises concerned, or, if such holder be not found there, by posting the said notice of revocation in some conspicuous place upon the said premises. Any person who shall proceed thereafter with such work or use without having obtained a new certificate in accordance with this Resolution shall be deemed guilty of violation thereof.

2. In case any building is or is proposed to be located, erected, constructed, reconstructed, enlarged, changed, maintained or used or any land is or is proposed to be used in violation of this Resolution or any amendment or supplement thereto, the Zoning Inspector, County Prosecutor, or any adjacent or neighboring property owner who would be especially damaged by such violation, in addition to other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action, actions, proceeding or proceedings to prevent, enjoin, abate or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use.

## 7.4 PENALTIES

It shall be unlawful to locate, erect, construct, reconstruct, enlarge, change, maintain, or use any building or land in violation of any regulation in or any provisions of this Resolution or any amendment or supplement thereto adopted by the Board of Trustees. Any person, firm or corporation violating any regulation thereto, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars (\$500). Each and every day during which such illegal location, erection, construction, reconstruction, enlargement, change, maintenance, or use continues may be deemed a separate offense.

## 7.5 ZONING COMMISSION

1. Whenever the public necessity, convenience, general welfare or good zoning practices require, the Board of Trustees may, by resolution after receipt of recommendations thereof from the Zoning Commission, and subject to the procedures provided by law – amend, supplement or change the regulations, district boundaries or classification of property, now or hereafter established by this Resolution or amendments thereof. It shall be the duty of the Zoning Commission to submit its

recommendations regarding all applications or proposals for amendments or supplements to the Board of Trustees.

- 2. **Appointment.** There is hereby established a Zoning Commission which shall consist of five (5) individuals who reside in the unincorporated area of the township appointed by the Board of Trustees. The Board of Trustees shall choose a successor to fill any vacancy. The terms of the regular members shall be of such length and so arranged that the term of one member will expire each year. Each member shall serve until his successor is appointed and qualified. Vacancies shall be filled by the Board of Trustees and shall be for the respective unexpired term. The members of the Zoning Commission may receive such compensation as the Board of Trustees provides.

The Board of Township Trustees may appoint two (2) alternate members to the Township Zoning Commission for terms as determined by the Board of Township Trustees. An alternate member shall take the place of an absent regular member at any meeting of the Zoning Commission according to procedures prescribed by resolution of the Board of Township Trustees. An alternate member shall meet the same appointment criteria as a regular member. When attending a meeting on behalf of an absent member, the alternate member may vote on any matter on which the absent member is authorized to vote.

- 3. **Hearings and Rules.** The hearings of the Zoning Commission shall be public and held monthly. The Commission shall adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of this Resolution. The Zoning Commission shall organize annually and elect a President, Vice-President and Secretary. Commission Members are subject to Ohio Ethics Commission code of ethics as it applies to individuals serving on local government boards and commissions and shall recuse themselves from participating in a hearing if they are an adjoining or abutting property owner or lease of a Map Amendment request as follows:

A. The property they own or lease is zoned A, R -1, C-1, C-2, C-3, M-1 or M-2, the member shall recuse themselves from any case within a 500' radii of the property they own or lease.

B. The property they own or lease is zoned R-2 or R-C, the member shall recuse themselves

from any case within a 300' radii of the property they own or lease.

C. The property they own or lease is zoned R-3, L or LBO, the member shall recuse themselves from any case within a 200' radii of the property they own or lease.

- 4. **Quorum.** A quorum shall consist of three (3) members of the Zoning Commission which shall be the minimum number permitted to conduct business. An affirmative vote of a majority of the members in attendance shall be required for action. Failure of an item to receive a majority vote shall constitute disapproval. When a quorum is lacking, staff shall postpone or cancel items requiring a vote and may proceed with items presented for information only.

7.6 PROCEDURE FOR CHANGE IN ZONING DISTRICTS

- 1. Amendments or supplements to zoning resolution; procedures; referendum. Amendments or supplements to the zoning resolution may be initiated by motion of the Township Zoning Commission, by the passage of a resolution thereof by the Board of Township Trustees or by filing of an application therefore by one (1) or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendments or supplement with the Township Zoning Commission. The Board of Township Trustees shall upon the passage of such resolution certify it to the Township Zoning Commission.

Upon the adoption of such motion, or the certification of such resolution or the filing of such application the Township Zoning Commission shall set a date for a public hearing thereon, which date shall not be less than twenty (20) nor more than forty (40) days from the date of the certification of such resolution or the date of adoption of such motion or the date of the filing of such application.

- 2. Applications for change of district boundaries or classifications of property as shown on the Zoning Map, shall be submitted to the Zoning Commission, at its public office, upon such forms, and shall be accompanied by such data and information, as may be prescribed for that purpose by the Commission, so as to assure the fullest practicable presentation of facts for the permanent record.

Each such application shall be verified by at least one (1) of the owners or lessees of property within the area proposed to be reclassified, attesting to the truth and correctness of all facts and information presented with the applications. Applications for amendments initiated by the Commission shall be accompanied by its motion pertaining to such proposed amendment.

3. **Names and addresses of adjacent property owners.** Any person or persons desiring a change in the zoning classification of property shall file with the application for such change, a statement giving the names and addresses of the owners of all properties lying within, contiguous to, and directly across the street from the property the zoning classification of which is proposed to be changed. The names and addresses of said owners shall be obtained from the County Auditor's current tax list or the County Treasurer's mailing list. Failure to submit a complete listing of property owners may result in revocation of the zoning change.
4. **Referral of proposed change to the Regional Planning Commission.** Within five (5) days after the adoption of such motion, or the certification of such resolution, or the filing of such application, the Zoning Commission shall transmit a copy thereof, together with text and map pertaining thereto to the Regional Planning Commission. The Regional Planning Commission shall recommend the approval or denial of the proposed amendment or 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 on such proposed amendment or supplement.
5. **Public Hearing by Zoning Commission.** Before submitting its recommendation on a proposed amendment to the Board of Trustees, the Commission shall hold a public hearing thereon, notice of which shall be given by publication in a newspaper of general circulation in the Township at least ten (10) days before the date of hearing. The notice shall state the place or places and times at which the proposed amendment to the Resolution including the text and maps, may be examined.
6. **Notice to property owners by Zoning Commission.**
  - A. If the proposed amendment or supplement intends to rezone or redistrict ten (10) or

fewer parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the 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 street from such area proposed to be rezoned or redistricted to the addresses of such owners appearing on the County Auditor's current tax list. The applicant shall supply the necessary names and addresses to the Township Zoning Inspector. The failure of delivery of such notice shall not invalidate any such amendment or supplement.

- B. If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the County Auditor's current tax list, the published and mailed notices shall set forth the time, date, and place of the public hearing, and shall include all of the following:
  - i. The name of the zoning commission that will be conducting the public hearing.
  - ii. A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;
  - iii. A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of the owners of these properties, as they appear on the county auditor's current tax list;
  - iv. The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;
  - v. The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for a period of at least ten (10) days prior to the public hearing;
  - vi. The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;
  - vii. Any other information requested by the zoning commission;
  - viii. A statement that after the conclusion of such hearing the matter will be submitted to the Board of Township Trustees for its action.

- C. If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten (10) parcels of land, as listed on the County Auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing, and shall include all of the following:
  - i. The name of the zoning commission that will be conducting the public hearing on the proposed amendment;
  - ii. A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;
  - iii. The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten (10) days prior to the public hearing.
  - iv. The name of the person responsible for giving notice of the public hearing by publication;
  - v. A statement that after the conclusion of such hearing the matter will be submitted to the Board of Township Trustees for its action; and
  - vi. Any other information requested by the zoning commission.
- 7. **Action by Zoning Commission.** The Commission may recommend that the application be granted as requested, or it may recommend a modification of the zoning amendment requested in the application, or it may recommend that the application not be granted. These recommendations shall then be certified to the Board of Trustees within thirty (30) days after the hearing.

A proposed amendment may be approved if it meets at least one of the following criteria, and if its benefits will likely outweigh any potential pitfalls.

  - A. Text Amendments:
    - i. The proposed amendment will make the Resolution conform more closely with the Land Use Plan.
    - ii. The proposed amendment will improve the public health, safety, or general welfare of Danbury Township.
    - iii. The proposed amendment will clarify the intent of the Resolution.
    - iv. The proposed amendment will better implement the intent of the Resolution.
    - v. The proposed amendment will improve enforcement of the Resolution.
  - B. Map Amendments:
    - i. There is an error on the Official Zoning Map or in the delineations between districts thereon.
    - ii. The proposed amendment will make the map conform more closely with the Land Use Plan.
    - iii. There has been a substantial change in area conditions that necessitates the amendment.
    - iv. There is a legitimate need for additional land area in the zoning district that will be expanded.
- 8. **Public hearing by Board of Township Trustees.** Within thirty (30) days after receiving from the Commission the certification of said recommendations on the proposed amendment, and before adoption of such amendment, the Board of Trustees shall hold a public hearing thereon, at least ten (10) days notice of the time and place of which shall be given by publication in a newspaper of general circulation in the Township. The notice shall state the place or places and times at which the proposed amendment to the Resolution, including text and maps, may be examined and other notices as required by state statutes.
  - A. If the proposed amendment intends to rezone or redistrict ten (10) or fewer parcels of land as listed on the County Auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and shall include all of the following:
    - i. The name of the board that will be conducting the public hearing.
    - ii. A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;
    - iii. A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of these properties, as they appear on the County Auditor's current tax list;
    - iv. The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

- v. The time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten (10) days prior to the public hearing;
  - vi. The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail; and
  - vii. Any other information requested by the board.
- B. If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten (10) parcels of land as listed on the County Auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing, and shall include all of the following:
- i. The name of the board that will be conducting the public hearing on the proposed amendment;
  - ii. A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;
  - iii. The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten (10) days prior to the public hearing;
  - iv. The name of the person responsible for giving notice of the public hearing by publication; and
  - v. Any other information requested by the board.
9. **Action of Board of Township Trustees.** Within twenty (20) days after holding the public hearing, the Board of Township Trustees shall consider such recommendations and vote on the passage of the proposed amendment to the text of the Resolution or Zoning District Map. The Board of Township Trustees may overrule the recommendations of the Commission by majority vote of the Board.
10. Such amendment or supplement adopted by the Board shall become effective thirty (30) days after the date of such adoption unless within thirty (30) days after the adoption of the amendment or supplement 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 or supplement to the electors of such area for approval or rejection at the next primary or general election. No amendment or supplement for which such referendum vote has been requested shall be put into effect unless a majority of the vote 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.

#### 7.7 APPLICATION FEES

At the time that an application for change of zoning districts is filed with the Commission, as provided herein, a fee established by the Board of Township Trustees shall be required.

#### 7.8 BOARD OF ZONING APPEALS ORGANIZATION AND DUTIES

##### 1. Organization and Procedures of the Board of Zoning Appeals

A. **Appointment.** There is hereby established a Board of Zoning Appeals which shall consist of five (5) individuals who reside in the unincorporated area of the township appointed by the Board of Trustees. The Board of Trustees shall choose a successor to fill any vacancy. The terms of the regular members shall be of such length and so arranged that the term of one member will expire each year. Each member shall serve until his successor is appointed and qualified. Vacancies shall be filled by the Board of Trustees and shall be for the respective unexpired term. The members of the Board of Zoning Appeals may receive such compensation as the Board of Trustees provides.

The Board of Township Trustees may appoint two (2) alternate members to the Township Board of Zoning Appeals for terms as determined by the Board of Township Trustees. An alternate member shall take the place of an absent regular member at any meeting of the Board of Zoning Appeals according to procedures

prescribed by resolution of the Board of Township Trustees. An alternate member shall meet the same appointment criteria as a regular member. When attending a meeting on behalf of an absent member, the alternate member may vote on any matter on which the absent member is authorized to vote.

**B. Hearings, Rules, etc.** The hearings of the Board of Zoning Appeals shall be public and held monthly. The Board shall organize annually and elect a President, Vice-President and Secretary. The Board shall adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of this Resolution. Board Members are subject to Ohio Ethics Commission code of ethics as it applies to individuals serving on local government boards and commissions and shall recuse themselves from participating in a hearing if they are an adjoining or abutting property owner or leasee of any case as follows:

i. The property they own or lease is zoned A, R-1, C-1, C-2, C-3, M-1 or M-2, the member shall recuse themselves from any case within a 500' radii of the property they own or lease.

ii. The property they own or lease is zoned R-2 or R-C, the member shall recuse themselves from any case within a 300' radii of the property they own or lease.

iii. The property they own or lease is zoned R-3, L or LBO, the member shall recuse themselves from any case within a 200' radii of the property they own or lease.

**C. Quorum.** A quorum shall consist of three (3) members of the Board which shall be the minimum number permitted to conduct business. An affirmative vote of a majority of the members in attendance shall be required for action. Failure of an item to receive a majority vote shall constitute disapproval. When a quorum is lacking, staff shall postpone or cancel items requiring a vote and may proceed with items presented for information only.

**2. Powers and Duties.** The Board of Zoning Appeals shall have the following powers and responsibilities:

**A. Appeals:** To hear and decide appeals where it is alleged there has been an error in any interpretation, order, requirement, decision, or determination by the zoning inspector in the enforcement and administration of the Resolution.

i. An appeal to the Board may be taken by any person aggrieved or by an officer of the Township affected by any decision of the Zoning Inspector. Such appeal shall be taken within twenty (20) days after the decision, by filing with the Zoning Inspector and with the Board a notice of appeal specifying the grounds thereof. The Zoning Inspector shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken.

ii. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Inspector shall certify to the Board of Zoning Appeals after the notice of appeal shall have been filed with it that by reason of facts stated in the certificate, a stay would, in ~~his~~ **their** opinion, cause imminent peril to life or property, in which case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board or by a court of equity, after notice to the office from whom the appeal is taken and on due cause shown.

iii. In exercising their duties to hear an appeal, the Board may reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination appealed from, and ~~shall~~ **may** make such order, requirement, decision or determination as in its opinion ought to be made on the premises; and to that end, shall have all powers of the Zoning Inspector from whom the appeal is taken.

**B. Special Exceptions.** To hear and decide the following special exceptions:

i. Permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God, or the public enemy to the extent of more than seventy-five (75) percent of its fair market value where the

Board finds some compelling necessity requiring a continuance of the nonconforming use and the primary purpose of continuing the nonconforming use is not to continue a monopoly.

- ii. Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements; or permit (1) the waiver of the requirement that automobile parking space be provided on the same lot with a dwelling, if other suitable and convenient parking space is available within or without a building; or (2) the dual use of parking facilities (i.e. by stores during the day and theaters during the evening) provided there is no overlapping of use and the parking space requirements for each building or use are complied with during each period.

C. **Variances.** The Board shall have the power to hear and decide such variances from the provisions or requirements of this Resolution as will not be contrary to the public interest. There are two types of variances which the township may grant: an area variance and a use variance. The factors to be considered by the Board of Zoning Appeals differ for the two types of variances.

- i. **Area Variance.** An area variance is a departure from the provisions of the zoning resolution usually relating to setbacks, side yards, height, frontage/lot width, and lot size. These variances relate to the physical characteristics of the property. Strict enforcement of the zoning requirements for the specific lot would present "practical difficulties", basically making the property unusable.

The factors or standards to be considered and weighed for an area variance include, but are not limited to the following:

- 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 (for example, water, sewer, garbage).
- e. Whether the property owner purchased the property with knowledge of the zoning restriction.
- f. Whether the property owner's predicament feasibly can be obviated through some method other than a variance.
- g. Whether the spirit and intent behind the zoning requirements would be observed and substantial justice done by granting the variance.

- ii. **Use Variance.** A use variance involves the development or conversion of land for a use not permitted in the specific zoning district. The factors or standards applied to a use variance are those related to the concept of "unnecessary hardship".

A use variance must not be contrary to the public interest and the board of zoning appeals must insure that the spirit of the zoning resolution is observed. In other words, the use requested is consistent and harmonious to the existing uses. In addition, all of the following conditions must also be found to exist:

- a. The special circumstances or conditions applying to the building or land in question are peculiar to such lot or property and do not apply generally to other land or buildings in the vicinity and were not created by the applicant.
- b. The granting of the application is necessary for the preservation and enjoyment of a substantial property right and not merely to serve a convenience to the applicant.

- c. The authorizing of the variance will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire or imperil the public safety or unreasonably diminish or impair established property values within the surrounding areas, or in any way impair the health, safety, convenience, or general welfare of the inhabitants of the Township.

D. **Conditional Uses.** The Board shall have the power to hear and decide Conditional Uses as outlined in Section 6.2 of this Resolution.

- 3. **Burden of Proof.** The applicant shall be required to present by preponderance of reliable, probative and substantial testimony and evidence that supports the applicants' request for a variance or Conditional Use Permit.
- 4. **Summary.** In either type of variance request, the variance as granted shall be the minimum variance necessary to accomplish the reasonable use of the land or building. The granting of a variance is valid for a period of one (1) year, and upon the expiration of such period shall automatically be deemed revoked, unless a building permit for such erection or alterations is obtained and the work is started within such period, or, where no erection or alteration is necessary, the permitted use is established within such period, or an extension is requested in writing and granted by the Board.

The Board may attach conditions and require such guarantees or bonds as it may deem necessary to assure compliance with the objectives of this Resolution. Failure to comply with the conditions of a decision shall be deemed a violation of this Zoning Resolution.

- 5. Procedures for approval for all Board of Zoning Appeals functions including Appeals, Variances, Special Exceptions and Conditional Use are outlined in Section 6.3.

## 7.9 NON-CONFORMING USES

- 1. **Purpose.** The purpose of this section is to (1) define the legal status of buildings or land uses which do not conform to this Resolution but which were in operation prior to the enactment of this Resolution and (2) to provide either for the conversion of nonconforming uses into conforming uses as soon as reasonably possible or for their eventual and equitable elimination.
- 2. Any lawful uses of buildings and/or land existing at the effective date of this Resolution may be continued, even though such use does not conform to the District provisions.
- 3. The addition to or enlargement of a nonconforming building or structure shall be permitted provided such addition or enlargement does not exceed twenty (20%) percent of the floor area contained in the original building or structure at the time of the adoption of this Resolution. All other requirements of the District (lot area, yards, etc.) shall be met unless a variance is obtained.
- 4. A nonconforming use of land shall not be expanded or extended into any other portion of the lot or adjoining property.
- 5. Whenever the use of a building or land becomes nonconforming through a change in the amended Zoning Resolution or in the District boundaries, such use may be continued.
  - A. After the effective date of this Resolution a nonconforming use which is discontinued for a period of two (2) years shall not again be used except in conformity with the regulations of the district in which it is located.
  - B. It is not the intention herein to classify as nonconforming, a use ~~or building~~ allowed in a district as a conditional use under the regulations of this Resolution.
- 6. A nonconforming use or structure which has been damaged by fire, explosion, act of God, or the public enemy or demolished, removed, or structurally altered voluntarily, to the extent of seventy-five (75) percent or more of its reproduction value at the time of damage shall not be restored except in conformity with the regulations of the district in which it is located.
  - A. When damaged by less than seventy-five (75) percent of its reproduction value, a nonconforming use may be repaired or reconstructed, and used as before the time of damage, provided such repairs or

reconstruction are started within one (1) year of the date of such damage.

7. Any building arranged, intended or designed for a nonconforming use, the construction of which has been started at the time of the passage of this Resolution, but not completed, may be completed and put into such nonconforming use, provided it is done within one (1) year after this Resolution takes effect.

~~F. Any use which is a permitted conditional use in a district under the terms of this Resolution shall, without further action, be considered a conforming use.~~

8. An applicant for any development review procedure that deals with a nonconforming use shall bear the burden of proof in demonstrating that the use was a legal nonconforming use on the effective date §1.5 of this Resolution.