



STAFF REPORT

Board of Trustees

Meeting Date: June 13, 2018

Case #: ZC-2018-045
Applicant: Danbury Township

Request: **Request for Text Amendments** to Article 7, Section 7.5.3 & Section 7.8.1.B Establish term limits for the elected positions of the Zoning Commission and Board of Zoning Appeals. Section 7.5.4 & Section 7.8.1.C Tie vote on an application under consideration shall be placed on the next agenda. Article 7, Section 7.6 General simplification, clarification and number restructuring to refer to ORC 519.12 regarding the Zoning Commission amendment process and notification requirements. Article 7, NEW Section 7.6.3.B – Optional language consideration dependent on the outcome of HB 500 by time the zoning resolution is codified at the end of 2018. Language is in regards to whether State statute requires applications to be forwarded to Regional Planning for a recommendation as a mandatory requirement or optionally. **Danbury Township, Applicant.**

DESCRIPTION:

As a result of reviewing the Zoning Commission and Board of Zoning Appeals Bylaws at their annual organizational meetings, it was realized that how the Board & Commission wanted to handle tie votes was not what the zoning resolution stated. The Zoning Resolution states that majority vote of quorum is needed for an item to pass, failure to receive majority vote, the item fails. This would have included any item that may have resulted in a tie vote, because majority was not reached. The BZA & ZC however had in their Bylaws that if a tie vote was reached, the item should be placed on the next agenda. The thought with this is to allow then a full board to review the case and vote on. It is rare to have this happen since Danbury Township has alternates, but it has happened. It's particularly important for the BZA cases due to Res Judicata.

The second item that came up at the organizational meetings was to establish term limits for the elected positions of the Boards (Chair, Vice Chair, and Secretary). The Zoning Commission has had term limits in their Bylaws for 6 years, however the BZA never wished to put term limits in place until recently. Legal Counsel has advised that it may not be necessary to include in the zoning resolution these limits since it's more of an administrative matter, however, the Board of Zoning Appeals is a creature of the ORC and 519.15 states "*The township board of zoning appeals shall organize and adopt rules in accordance with the zoning resolution*".

Overall, throughout Section 7.6, the goal was to provide a summary of the Zoning Commission hearing process, without repeating everything that is already in the ORC, specifically about the notification process. All notification requirements outlined by the ORC are handled by the zoning staff as well as the responsibility to ensure the timing of everything is filed, forwarded and heard in the limits set forth in the ORC. The only thing that is required by the applicant is to submit a listing of adjoining property owners. This is double checked, but ultimately staff makes sure it gets done correctly and on time.

This brings us to new Section 7.6.3.B. There is HB 500 that is currently under consideration at the State which would make amendment applications being forwarded to OCRPC optional instead of mandatory. The Township has the zoning resolution codified once a year, usually at the end of December/beginning of January to incorporate all the changes that took effect in that calendar year. There are two options under consideration for this paragraph, dependent on what happens with HB 500. We would ask that this is reviewed and decided upon, with the understanding that only the paragraph that is effective when the resolution is codified is the paragraph that will be included. The thought on this is no matter what, we are

subject to the ORC requirements, but discussing it now while we are making other changes in this Section would save us from having to come back for another text amendment request should HB 500 be passed and in effect by time we get the zoning resolution codified.

AGENCY REVIEWS:

Ottawa County Regional Planning Commission (OCRPC) was forwarded the proposed amendments on April 5, 2018 and held a hearing on April 17, 2018. Attached is OCRPC's decision letter recommending Approval as Presented with the understanding that the language regarding HB 500 is dependent on that bill's passage at the State level. The Danbury Township Zoning Commission held a public hearing May 2, 2018 and recommended 5-0 **Approval as Presented** to the Board of Trustees citing that decision standard 'iii' was satisfied.

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.

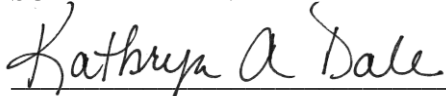
A. **Text Amendments:**

- 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.

STAFF RECOMMENDATION:

None.

SUBMITTED BY:



Kathryn A. Dale, AICP
Danbury Township Zoning Inspector

Date Prepared: May 3, 2018



OTTAWA REGIONAL PLANNING COMMISSION

COUNTY COURTHOUSE - ROOM 107 • 315 MADISON STREET • PORT CLINTON, OHIO 43452
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April 18, 2018

Jodi Kopanski
364 N Florence Drive
Marblehead, Ohio 43440

RE: Danbury Township Text Amendments

Dear Ms. Kopanski:

At the regular meeting of the Ottawa Regional Planning Commission held on April 17, 2018 text amendments that were initiated by the Danbury Township Zoning Commission were heard. The Commission considered the following items in reaching its recommendation.

The text amendments were initiated by an application filed by Danbury Township Zoning Commission.

The text amendments propose to:

- a) Editing language to the Danbury Township Zoning Resolution that will clarify the procedure should there be a tie vote by the BZA and Zoning Commission. Currently the resolution states a majority vote is required for passage of an item being heard. This would mean a tie vote would result in failure. However the by-laws state that items resulting in a tie vote are to be placed on the next month's agenda. This text amendment will allow the resolution to match the by-laws.
- b) Proposing to add term limits for the BZA and Zoning Commission elected positions. These term limits are currently listed in the by-laws. The term limits would be for three (3) years and then abstain for one (1) year before being re-elected.
- c) Condensed and clarified the language as it relates to the hearing process to avoid repeating everything that is stated in the Ohio Revised Code.
- d) Lastly, language is being proposed as it relates to the proposed House Bill 500 in regards to Regional Planning Commissions hearing and making recommendations on zoning changes. The township requested this to be considered while they were reviewing this section of the resolution with the understanding that what is ultimately included in the resolution and codified at the end of the year will be dependent on the language and outcome of House Bill 500.

The Commission voted to recommend approval of the text amendments. Should you have any questions, please feel free to contact my office.

Sincerely,

Mark Messa
Director

Cc: Carolyn Adams
Kathryn Dale
Jeff Morgan
file

Article 7.0
Administration, Appeals and
Enforcement

Article 7.0	Administration, Appeals and Enforcement
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. **Elected officers are permitted to hold the same elected position for a maximum of three (3) consecutive years and must abstain for one (1) full year before being re-elected to that position.** 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 & Decisions.** A quorum shall consist of three (3) members of the Zoning Commission which shall be the minimum number permitted to conduct business. When a quorum is lacking, staff shall postpone or cancel items requiring a vote and may proceed with items presented for information only. 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. **Should the vote of the Commission result in a tie vote, the application shall be placed on the next agenda.**

7.6 PROCEDURE FOR CHANGE IN ZONING DISTRICTS

1. ~~Amendments or supplements to the zoning resolution; procedures; referendum.~~ **Amendments or supplements to the zoning resolution or map must follow the procedures stipulated in O.R.C. 519.12 and any amendments thereof, are adopted herein. The Danbury Zoning Resolution provides a summary of those steps.**

Amendments 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 hold a public hearing at or be less than two (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.~~

PARAGRAPH MOVED TO NEW 3.A

2. **Applications.** **Applications for Amendments to the zoning resolution or map** ~~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.

A. 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.~~ **B.** 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.~~

3. Process.

A. 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.

B. The Zoning Commission shall forward the 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, **for a recommendation of approval, denial, or approval with modifications. Such recommendation shall**

be considered at the public hearing held by the Zoning Commission on such proposed amendment.

OR

(if HB 500 is Adopted by end of 2018)

B. The Zoning Commission has the option of referring the 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, **for a recommendation of approval, denial, or suggestions. Such recommendation shall be considered at the public hearing held by the Zoning Commission on such proposed amendment., if it is received.**

~~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.~~

C. Notification. Prior to the public hearings held before the Zoning Commission or Board of Trustees, notice shall be given by publication in a newspaper of general circulation in the Township at least ten (10) days before the date of the hearing. Additional requirements of what the notice shall include and when neighbors are required to receive personal notice are outlined in O.R.C. 519.12.

~~5.~~ **D. 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.

~~3. 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. **E. 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.

1. Text Amendments:

- a) The proposed amendment will make the Resolution conform more closely with the Land Use Plan.
- b) The proposed amendment will improve the public health, safety, or general welfare of Danbury Township.
- c) The proposed amendment will clarify the intent of the Resolution.

- d) The proposed amendment will better implement the intent of the Resolution.
- e) The proposed amendment will improve enforcement of the Resolution.

2. Map Amendments:

- a) There is an error on the Official Zoning Map or in the delineations between districts thereon.
- b) The proposed amendment will make the map conform more closely with the Land Use Plan.
- c) There has been a substantial change in area conditions that necessitates the amendment.
- d) There is a legitimate need for additional land area in the zoning district that will be expanded.

8. **F. 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. **G. 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.

~~10-4. Such an 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 **and in accordance with O.R.C. 519.12**, 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, **or an application for a hearing before the Board of Zoning Appeals**, 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. **Elected officers are permitted to hold the same elected position for a maximum of two (2) consecutive years and must abstain for one (1) full year before being re-elected to that position.** 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 & Decision.** A quorum shall consist of three (3) members of the Board which shall be the minimum number permitted to conduct business. When a quorum is

lacking, staff shall postpone or cancel items requiring a vote and may proceed with items presented for information only. 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. **Should the vote of the Board result in a tie vote, the application shall be placed on the next agenda.**

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 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 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 fr.

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 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.
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.

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