Township Zoning Overview

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- What is Zoning?
- Zoning Responsibilities - Township Zoning Commission
  - Make Up and Duties
  - Zoning Amendment Process
  - Public Hearing Procedure
- Zoning Responsibilities - Township Trustees
- Zoning Responsibilities - Township Zoning Inspector
- Zoning Responsibilities - Township Board of Zoning Appeals
  - Make Up and Duties
  - Public Hearing Procedure
- Common Problems Zoning Cannot Address
- Zoning Enforcement Options
What is Zoning?

- Zoning is a local legislative process that regulates and controls the use, placement, spacing and size of private property.
- Zoning divides a political subdivision into zoning districts that determine what uses are allowed.
- Zoning also regulates lot size, building height and other dimensional requirements by enacting uniform regulations within the zoning districts.

What Does Zoning Do?

- Zoning aims to:
  - Promote public health and safety
  - Use land for the most suitable purpose
  - Protect and maintain property values
  - Protect the stability and preservation of residential neighborhoods
  - Manage density
  - Provide for more orderly development
  - Encourage economic stability and growth
Township Zoning

- Townships have the authority to pass zoning legislation under Ohio Revised Code Chapter 519.

- This is permissive rather than mandatory - that is, a township may choose to have zoning, but they are not required to.

- Township zoning is a police power that must bear a reasonable relationship to the public health and safety.

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Township Zoning

- If a township chooses to enact zoning regulations, the Trustees must establish a body known as the zoning commission to advise them on zoning map and text amendments.

- An administrative body - the board of zoning appeals - is also created to consider appeals and requests for variances and conditional use certificates.

- The Township must strictly follow the procedures and standards in the Ohio Revised Code when administering (and deciding what to put into) their zoning resolution.
Township Zoning

- A zoning resolution contains permitted, accessory and conditional uses by zoning district.

- Any use listed in a district as a permitted and accessory use is allowed upon satisfaction of the standards and requirements of the zoning resolution.

- A use specifically listed as a conditional use in a particular zoning district of the zoning resolution is one that must be authorized by the board of zoning appeals.

- Zoning also contains area regulations. The area regulations deal with development standards rather than specific uses. These regulations determine the extent to which an owner can property.

Zoning Commission

- Commission Make Up
  - 5 members who must reside in the unincorporated area of the Township
  - Commission is allowed 2 alternates - their term is determined by the Board of Trustees
  - An alternate may take the place of an absent regular member at any meeting of the zoning commission. They must remain in place for all testimony regarding the matter at hand.
  - Each member shall serve a five year term with the term of one member expiring each year
  - Each member is appointed by the Board of Township Trustees
  - Vacancies are filled by appointment by the Board of Trustees and shall be for the time remaining in the unexpired term.
Powers and Duties

- Initiate proposed amendments to the zoning resolution
- Review all proposed amendments to the zoning resolutions and make recommendations to the Board of Trustees
- Perform any and all other duties as specified in Ohio Revised Code Chapter 519 and as specified in the zoning resolution

The zoning commission is required to organize, adopt rules for the transaction of its business, and keep a record of its actions and determinations.
Meetings are held at the call of the chair and at such other times as the zoning commission may determine.

The zoning commission is required to keep minutes

- Show the vote taken
- These are public record and must be timely filed with the Township

How many are required for a zoning commission to take official action?

- Simple majority of a quorum at the meeting - could be as few as 2
- Majority of the zoning commission members - at a minimum 3

Please check your zoning resolution for the specifics in your community
Zoning Commission - Questions

- If alternates are present at a meeting and all five zoning commission members are also present, what is the role of the alternate?

- If the zoning commission holds a work session that is not an advertised public meeting, can the zoning commission take any actions?
Zoning Commission - Amendment Process

- Who can apply for an amendment?
  - Township Zoning Commission by motion
  - Township Trustees by resolution
  - Property Owner by application

Zoning Commission - Amendment Process

- The process once an application is filed:
  - A copy of the proposed amendment must be transmitted to the County Regional Planning and Coordinating Commission within 5 days of receipt
  - A public hearing must be scheduled no sooner than 20 days, but no later than 40 days from the receipt of the proposed amendment
  - Newspaper notice of public hearing must be published at least 10 days prior to the hearing date in a newspaper of general circulation in the Township.
  - Written notice to property owners within, contiguous to, and directly across the street from the land to be rezoned must be sent at least 10 days prior to the public hearing if 10 or few parcels of property are proposed to be rezoned.
Zoning Commission - Amendment Process

NOTE: Ohio Revised Code Section 5511.01 requires that notice be sent to the Ohio Department of Transportation before any amendment is approved which affects land near proposed new highway or planned improvements.

Zoning Commission - Amendment Process

The published and mailed notice must include the time, date and place of the public hearing and all other required information as specified in 519.12(C).
Zoning Commission - Amendment Process

What does Regional Planning do when they receive a proposed zoning amendment?

- They will review the request at a regularly scheduled RPCC meeting.
- They will transmit a recommendation to approve, deny or modify the proposed amendment to the township zoning commission.
Zoning Commission - Amendment Process

- Consider the recommendation of RPCC at their previously scheduled public hearing.
- A decision must be made on the proposed amendment within 30 days after the hearing. The recommendation of the Zoning Commission and RPCC shall be forwarded to the Township Trustees for their consideration.

Zoning Commission - Amendment Process

- Township Trustees’ Action
  - Set date for public hearing within 30 days after receipt of zoning commission’s recommendation
  - Newspaper notice of public hearing must be published at least 10 days prior to the hearing in a newspaper of general circulation in the Township
  - The published and mailed notice shall include the time, place and date of the public hearing.
Zoning Commission - Amendment Process

- Trustees must make a decision within 20 days after the close of the public hearing.
- Decision may be to adopt, deny or modify the recommendation of the township zoning commission. If the township trustees deny or modify the recommendation of the zoning commission, they must do so by majority vote.
- Failure to vote within the 20 day period does not constitute automatic approval of the township zoning commission's recommendation. Instead, they are subject to a writ of mandamus compelling them to act. See DeSerisy v. DeCourcy.

Zoning Commission - Amendment Process

- Any amendment adopted by the Trustees becomes effective in 30 days from the date of their decision (unless a petition for referendum is filed within that 30 day period).
- Trustees are required to file all adopted zoning amendments with the County Recorder within 5 working days after the effective date. A copy is generally also filed with RPCC.
Zoning Commission - Questions

- During the process, what criteria could change that would require the process to start over?
- If the amendment is complicated and time consuming during the public hearing, what steps need to be taken to continue the process to a later date?
- If a property owner or lessee is requesting a text amendment, should they be the ones to provide specific language to be reviewed?

Zoning Commission Public Hearings
Zoning Commission - The Public Hearing

- Open the public hearing
  - Open the meeting
  - Summarize the meeting process and purpose
  - Announce the subject of the application/or read the public hearing announcement
- Call for abstentions
  - The chairperson calls for abstentions by any decision-making member who may have a conflict of interest with respect to the matter at hand

Zoning Commission - The Public Hearing

- The RPCC Recommendation
- Staff Report
  - Generally presented by the zoning inspector
- Presentation of Applicant
- Persons who are in favor of the proposal
  - The chairperson invites comments and questions for the attending public who are in favor of the proposal
Zoning Commission - The Public Hearing

- Persons who are opposed to the proposal
  - The chairperson invites comments and questions for the attending public who are opposed to the proposal

- Statements or questions from the Commission
  - The chairperson invites the township zoning commission members to make comments or statements or to ask questions of the staff, attending public, or the applicant.

- Statements or questions
  - The chairperson can ask if anyone has any other questions or concerns. Any person in attendance may be called on at the chairperson’s discretion.

Zoning Commission - The Public Hearing

- Close the public portion of the hearing
  - Upon motion, the chairperson should close the public comment portion of the public hearing, or -
  - if the hour is late and another session is needed, the chairperson can announce a continuation of the hearing to a specific time, date and place.

- Deliberation
  - Once the public portion of the hearing is closed, the commission deliberates on the application in public. The chairperson may request clarification from staff, the applicant, or any audience member as needed.
  - This does not give anyone in the audience the ability to make additional comments or to ask any additional questions.
Zoning Commission - The Public Hearing

- Some things to remember:
  - ALWAYS have speakers state their name and address prior to making comments. This keeps your record clear.
  - All questions should be directed through the chairperson. This keeps the hearing moving in an orderly fashion.
  - It is the chairperson’s responsibility to control the meeting and keep people on task.

Township Trustees’ and Zoning Inspector’s Role in Zoning
Township Trustees’ Role in Zoning

- The Township Trustees have three basic powers when it comes to zoning
  - Appointments of: the zoning inspector, members of the zoning commission and members of the board of zoning appeals
  - To establish a schedule of fees for the various zoning procedures
  - To adopt and amend the zoning resolution

Township Zoning Inspector

- Often the most visible employee of the Township
- Deals with the day to day interpretation of the zoning resolution
- Required to be thoroughly familiar with the zoning resolution
- Must explain technical provisions of the resolution to township residents in terms they can understand
- Assist township residents in solving their zoning problems
- Must make decisions fairly and consistently
Township Zoning Inspector

- Shall enforce the zoning resolution
- Review all applications for zoning certificates within the township to ensure they conform to all applicable provisions of the zoning resolution
- Issue zoning certificates and maintain a record of the certificates issued
- Attend board of zoning appeals and zoning commission meetings
- Act as staff for the board of zoning appeals and zoning commission
- Conduct site inspections to ensure the actual construction conforms to the issued zoning certificate
- Take action necessary to correct discovered zoning violations
- Investigate alleged violations of the zoning resolution

Township Zoning Inspector

- Review all plats to determine if the plat conforms to all applicable provisions of the zoning resolution
- Keep the zoning map and resolution text up to date
- Provide zoning information upon request
Board of Zoning Appeals

BZA Make Up

- 5 members who must reside in the unincorporated area of the Township
  - BZA is allowed 2 alternates - their term is determined by the Board of Trustees
  - An alternate may take the place of an absent regular member at any meeting of the BZA. They must remain in place for all testimony regarding the matter at hand.
- Each member shall serve a five year term with the term of one member expiring each year
- Each member is appointed by the Board of Township Trustees
- Vacancies are filled by appointment by the Board of Trustees and shall be for the time remaining in the unexpired term.
Board of Zoning Appeals

- **Powers and Duties**
  - Hear and decide appeals where a property owner is displeased with any decision, order, requirement or determination made by the zoning inspector.
  - Authorize, upon appeal, a variance from the terms of the zoning resolution
  - Grant conditional zoning certificates for the use of land, buildings or other structures if those conditional uses are provided for in the zoning resolution
  - Revoke an authorized variance or conditional zoning certificate granted for the extraction of minerals, if any condition of the variance or conditional use certificate is violated.
  - Make similar use determinations

- **Meetings**
  - Meetings are held at the call of the chair and at such other times as the board of zoning appeals may determine.
  - The board of zoning appeals is required to keep minutes
    - Show the vote taken
    - These are public record and must be timely filed with the Township
    - The resolutions passed must also contain findings of fact and conclusions to support the decision made
Board of Zoning Appeals

- How many are required for a board of zoning appeals to take official action?
  - Simple majority of a quorum at the meeting - could be as few as 2
  - Majority of the board of zoning appeals members - at a minimum 3
  - Please check your zoning resolution for the specifics in your community

Board of Zoning Appeals - Questions

- Does the BZA have the authority to revoke a conditional use certificate granted if the property owner is violating the conditions put in place?
  - Probably not. This becomes a zoning violation that is subject to enforcement by the zoning inspector. The BZA only has the authority to revoke certificates dealing with mineral extraction.
The zoning inspector can only approve zoning permits if they conform to all the requirements of the zoning resolution.

Anyone displeased with the zoning inspector's decision - applicant or affected non-applicant property owner - can appeal the zoning inspector's decision to the BZA.

The appeal must be taken within 20 days of the decision. An appeal is taken by filing a notice of appeal with the zoning inspector and the BZA which specifies the grounds for the appeal.
Board of Zoning Appeals - Appeals, Conditional Uses and Variances

- The zoning inspector then sends all paperwork constituting the record upon which the decision was made.

- The zoning inspector also sends a copy of the application to the BZA.

- A quasi-judicial public hearing is held.

Board of Zoning Appeals - Appeals, Conditional Uses and Variances

- What is a conditional use?
  - Conditional uses generally follow the intent and character of a particular zoning district, but may possess characteristics which are different than the bulk of the permitted uses in that same district.

  - The characteristics may be objectionable due to location, site layout, or mode of operation and should be regulated.

  - Placing special conditions on such uses is considered necessary in order to lessen any possible negative impacts on surrounding parcels.
The administration of conditional uses must be based on a set of standards to measure the positive and negative impacts on the parcels surrounding the property.

The zoning resolution should specify conditions and standards by which a board of zoning appeals may determine whether a requested conditional use qualifies for approval.

The applicant bears the burden of proving that the proposed conditional use is justified and will not be a detriment to the neighborhood.

Conditional use process:

- Application is filed with the chairman of the BZA
- At least 10 days prior to the hearing, a notice shall be provided to all parties of interest
- At least 10 days prior to the hearing, a notice of public hearing must be advertised
- A quasi-judicial public hearing is held
Conditional use notes - things to know:
- Conditional uses “run with the land” - they are not limited to a particular property owner.
- If the property owner meets all the conditions for a particular conditional use, the BZA is not required to grant a conditional use certificate.
- There is often concern about “setting a precedent” - each property in your township is unique and may have different concerns for the BZA to consider.

Variance:
- There are two different types of variances - a use variance and an area variance.
- A “use variance” allows a property to be used in a way that is not allowed by the zoning resolution.
- An “area variance” provides relief from the area requirements contained within the zoning resolution.
  - Setbacks, lot size, height, frontage, structure size, etc.
- Each type of variance has a separate legal standard.
Board of Zoning Appeals - Appeals, Conditional Uses and Variances

- Use Variances - Standard
  - Granted only upon a finding of an “unnecessary hardship”
  - This means the property owner cannot make any economically viable use of the property without the variance

Board of Zoning Appeals - Appeals, Conditional Uses and Variances

- Use variances - the standard to apply:
  - The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zoning district
  - The hardship condition is not created by the actions of the applicant
  - The granting of the variance will not adversely affect the rights of adjacent property owners
  - The granting of the variance will not adversely affect the public health, safety or general welfare
Board of Zoning Appeals – Appeals, Conditional Uses and Variances

- **Use variances - the standard to apply (continued)**
  - The variance will be consistent with the general spirit and intent of the zoning resolution
  - The variance sought is the minimum which will afford relief to the applicant
  - There is no other economically viable use which is permitted in the zoning district

- **Area Variances - Standard**
  - Granted only upon a finding of an “practical difficulty” (a much less stringent standard)
  - The property owner is only required to show they will have a practical difficulty in complying with a particular requirement of the zoning resolution
  - Common scenarios: building a house on a parcel that is less than the minimum for that district/has weird frontage, trying to put up a fence or a shed on an oddly shaped parcel
Area Variances - the standard to apply

- Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance
- Whether the variance is substantial
- Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance
- Whether the variance would adversely affect the delivery of government services (water, sewer, fire, police, etc.)

Area variance - the standard to apply (continued)

- Whether the property owner purchased the property with the knowledge of the zoning restrictions
- Whether the property owner’s predicament could feasibly be solved through some method other than a variance
- Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance
Some things to know about variances:

- Once granted, they “run with the land”
- They are not intended to solve zoning text problems
  - Multiple similar variance requests is a signal that a text amendment may be in order

Variance process:

- Application is filed with the chairman of the BZA
- At least 10 days prior to the hearing, a notice shall be provided to all parties of interest
- At least 10 days prior to the hearing, a notice of public hearing must be advertised
- A quasi-judicial public hearing is held
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- Open the public hearing
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  - Summarize the meeting process and purpose
  - Announce the subject of the application/or read the public hearing announcement

- Call for abstentions
  - The chairperson calls for abstentions by any decision-making member who may have a conflict of interest with respect to the matter at hand
Board of Zoning Appeals - The Public Hearing

- Anyone wishing to present evidence is placed under oath by the chairperson of the BZA.
  - These individuals are providing testimony to the Board.
  - The chairperson may administer the oath “en masse”

- Presentation of Applicant

- Persons who are in favor of the application
  - The chairperson invites comments and questions for the attending public who are in favor of the proposal

- Persons who are opposed to the application
  - The chairperson invites comments and questions for the attending public who are opposed to the proposal

- Statements or questions from the Board of Zoning Appeals
  - The chairperson invites the township BZA members to make comments or statements or to ask questions of the staff, attending public, or the applicant.

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  - if the hour is late and another session is needed, the chairperson can announce a continuation of the hearing to a specific time, date and place.

- Deliberation
  - Once the public portion of the hearing is closed, the BZA deliberates on the application in private - this allows the BZA members to have candid discussion free from litigant pressure.

Board of Zoning Appeals - The Public Hearing

- The BZA decision
  - The final decision of the BZA must be in writing.
  - The final decision must also include the findings of fact related to specific standards stated in the zoning resolution that the applicant must satisfy.
Board of Zoning Appeals - The Public Hearing

- Some things to remember:
  - ALWAYS have speakers state their name and address prior to making comments. This keeps your record clear.
  - All question should be directed through the chairperson. This keeps the hearing moving in an orderly fashion.
  - It is the chairperson’s responsibility to control the meeting and keep people on task.
  - If an applicant of affected property owner is displeased with a BZA decision, they may appeal to the Common Pleas Court in your county.

What Zoning Cannot Address
Common Problems Zoning **Cannot** Address

- Fence line disputes
- “My neighbor’s tree is hanging over my fence”
- “My neighbor’s farm equipment/stereo/something else that makes noise runs at all hours”
- Neighbor disputes in general

Common Problems Zoning **Cannot** Address

- Things that are exempt from zoning regulation by state law
  - Cell towers in non-residential districts
  - Agriculture
- The color someone paints their house/shed/barn
- The type of home occupation someone engages in
- The specific type of church/recreational facility that is permitted
Zoning Enforcement Options

- Work with property owner to correct violation
  - May be faster, cheaper and easier

- Take legal action (only after working with the property owner doesn’t work)
  - Civil Action
  - Criminal Action