TOWNSHIP ZONING LAW
(OHIO REVISED CODE, CH. 519 – 37 TOTAL SECTIONS)
CREATURES OF STATUTE

- Townships have limited authority (only as much authority as provided by statute or necessarily implied by statute)
- This basic principle applies to zoning.
Orange Township
Zoning Resolution

Effective June 1, 2015 As Amended
“Controlling and promoting the quality of life in Orange Township”

Orange Township
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Delaware County, Ohio

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ZONING RESOLUTION
(R.C. § 519.02)
TOWNSHIPS CAN REGULATE:
(IN UNINCORPORATED AREA ONLY)
(IN ACCORDANCE WITH A COMPREHENSIVE PLAN)
(R.C. § 519.02)

- **Public health and safety:**
  - Location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches
  - Percentages of lot areas that may be occupied
  - Set back building lines
  - Sizes of yards, courts, and other open spaces
  - Density of population
  - Uses of buildings and other structures, including tents, cabins, and trailer coaches
  - Uses of land for trade, industry, residence, recreation, or other purposes

- **Public convenience, comfort, prosperity, or general welfare:**
  - Location of, set back lines for, and the uses of buildings and other structures, including tents, cabins, and trailer coaches
  - Uses of land for trade, industry, residence, recreation, or other purposes
  - Establish reasonable landscaping standards and architectural standards - excluding exterior building materials.

- **Public convenience, comfort, prosperity, or general welfare - for nonresidential property only:**
  - Height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches
  - Percentages of lot areas that may be occupied
  - Sizes of yards, courts, and other open spaces
  - Density of population.
COMPREHENSIVE PLAN

- Sets goals and objectives for zoning, planning, and growth
- **ONLY** a guide
- Not enforceable
**PROCESS FOR ADOPTING ZONING RESOLUTION**

(R.C. §§ 519.03-519.11)

1. **BOT approves resolution** declaring its intention to adopt zoning (i.e. proceed under R.C. §§ 519.02 to 519.25)
   - BOT’s own initiative
   - Resident Petition (Signed by 8% who voted for governor at last election)

2. **BOT appoints Zoning Commission** (ZC or BZC)

3. **ZC shall recommend a zoning plan** (i.e. zoning resolution (ZR)), including both text and maps
   - ZC must hold at least 1 public meeting on ZR before certifying to BOT

4. **ZC submits ZR, including text and maps, to the county or regional planning commission**
   - Planning commission is conclusively presumed unless, within 20 days, it notifies the ZC to the contrary
   - If planning commission disapproves or suggests any material change, the ZC shall hold a public hearing on the ZR

5. **ZC certifies the plan to the BOT**

6. **BOT holds public hearing and votes on the ZR**
   - BOT may not make any changes to ZR, as certified by the ZC, without resubmission to the ZC for approval, disapproval, or suggestions.
   - BOT must hold a second public hearing on ZC recommendations on changes.
   - If ZC disapprove changes, BOT must approve the disapproved changes by unanimous vote to be adopted.

7. **Issue of adoption of ZR submitted to electorate for vote.** If approved by majority, ZR takes immediate effect.

8. Within 5 working days after approval – BOT must **file ZR and maps with county recorder and planning commission**
ZONING RESOLUTION
(R.C. §§ 519.02)

- Divides unincorporated territory of township into districts or zones.
- No limits on number, shape, and area.
- Regulations must be uniform in each district or zone, but may differ from one zone or district to the next.
- Generally Includes:
  - Definitions
  - Development standards:
    - Signs
    - Driveways
    - Parking
    - Etc. . .
  - Rules for ZC, BZA, and ZI
TYPES OF ZONING DISTRICTS

- **Straight Districts**
  - Fully governed by requirements of ZR

- **Planned Unit Developments (PUD) (R.C. § 519.021)**
  - Governed by requirements of ZR and development plan
  - Within PUD - zoning regulations need not be uniform

- **Purpose:**
  - Promote the general public welfare
  - Encourage the efficient use of land and resources
  - Promote greater efficiency in providing public and utility services
  - Encouraging innovation in the planning and building of all types of development

- **Procedures** (legislative (subject to referendum) vs. administrative (appealable – R.C. Ch. 2506):
  - 1 Step Process (Simultaneously rezone and approve a final development plan)
  - 2 Step Process (Rezone/preliminary development plan and later approve a final development plan)
  - Float the Cloud (Rezone as overlay – Owner later elects to apply PUD zoning and submits development plan)
  - Conditional Use
NO AUTHORITY TO REGULATE:

- Agriculture (R.C. §§ 519.01 (Definition) and 519.21(A)-(C)(1))
  - Limited ability to prohibit (lot < 1 acre) or regulate (lot between 1 and 5 acres)
  - Limited ability to regulate farm markets
- Agritourism (R.C. § 519.21(C)(4))
  - Limited ability to regulate size of structures, size or parking, setbacks, and ingress/egress)
- (Non-conforming uses (R.C. § 519.19)
- Public utilities (R.C. § 519.211)
- Telecommunications towers, except under certain circumstances (R.C. § 519.211(B))
- Prohibit permanently sited manufactured homes (R.C. § 519.212)
AMBIGUITIES

- Zoning restricts the use of land
- Ambiguities are interpreted - in favor of the property owner and against the township.
ZONING INSPECTOR
(R.C. §§ 519.16 AND 519.161)
For the purpose of enforcing the zoning regulations, the BOT may establish and fill the position of township zoning inspector.

BOT may appoint assistant ZIs as the BOT deems necessary.

BOT may fix the compensation for those positions and may make disbursements for them.

The FO may be appointed to the following positions and receive compensation for the FO’s services in such positions (in addition to other compensation allowed by law):

- secretary of the township zoning commission.
- secretary of the township board of zoning appeals.
- zoning inspector.
DUTIES OF THE ZONING INSPECTOR

- Enforce the ZR
  - Issue Permits/Certificates (See R.C. § 519.16)
    - May only refuse to issue or hold a zoning certificate (or permit) when the subject property does not meet the requirements in the ZR for issuing the requested certificate.
  - Inspecting properties for compliance
  - Enforcement of ZR (i.e. issue violations)
    - Enforce ZR as written
    - May not add, delete, or substitute any terms, phrases, or provisions into the ZR.
LIMITATIONS ON ZONING INSPECTOR’S ABILITY TO INSPECT PRIVATE PROPERTY

- ZI is **NOT** an enforcement officer and may **NOT** enter and inspect private property without the consent of the owner or a search warrant unless:
  - There is an emergency
  - The property is open to the public, or
  - The industry conducted on the property has a history of government oversight such that no reasonable expectation of privacy exists.
VIOLATION
(R.C. § 519.23)

- No building shall be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used, and no land shall be used in violation of zoning resolution.

- Each day's continuation of a violation of this section may be deemed a separate offense.
TOWNSHIP
DELWARE COUNTY, OHIO
ZONING DEPARTMENT

CERTIFIED MAIL AND/OR HAND DELIVERED

RE: NOTICE OF ZONING VIOLATION

PROPERTY: __________________________________________________________

Type: _______________________________________________________________

Dear ________________________________________________________________,

According to Delaware County records, you are the owner of the above identified property ("Property") within
your jurisdiction as a result of an on-site review of the property. Certain conditions regarding zoning, minimum
space requirements, and/or other regulations have not been met and/or
complied with.

The Township has adopted an Administrative Zoning Resolution ("Resolution"). A copy of
the Resolution can be obtained at ____________________.

Current Zoning (Property):

1. Zoning District:

2. Undeveloped:\n
   a. Variance:

   b. Conditional Use:

3. Conditionally allowed use zoning issues on Your Property:

   a. Variance:

   b. Conditional Use:

   c. Others:

   d.的原因:

   e. 調整:

   f. 調整:

   g. 調整:

   h. 調整:

If you have any questions concerning this
or other matters, please contact the Zoning Inspector who can be reached at ____________________.

Thank you for your cooperation and compliance with the Township ORDINANCE.

____________________________
Township Zoning Inspector

[Signature]

[Stamp]
ENFORCEMENT
(R.C. § 519.24)

- **When:** When 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 zoning resolution.

- **Who:** The board, the prosecuting attorney, the township zoning inspector, or any adjacent or neighboring property owner who would be especially damaged by such violation.

- **What:** Injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove the unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use.

- **Where:** Courts (Likely Common Pleas Court).
PENALTY
(R.C. § 519.99)

- Fine $\leq 500$ for each offense.
- Correction of the violation.
ZONING COMMISSION
(R.C. §§ 519.05-519.05)
LIMITED FUNCTION
(R.C. §§ 519.04-519.12)

- Hold hearings and make recommendations to BOT on initial zoning plan (i.e. ZR)
- Hold hearings and make recommendations to BOT on text amendments to ZR and rezones
REGULAR MEMBERS
(R.C. § 519.04)

- 5 members
- Must live in the unincorporated area of the township
- Term = 5 years, arranged so term of 1 member will expires each year.
- Planning commission members may serve on ZC.
- Members serve until a successor is appointed and qualified
- Vacancies shall be filled by the BOT and shall be for the unexpired term
ALTERNATE MEMBERS
(R.C. § 519.04)

- BOT may appoint 2 alternate members
- Shall meet the same appointment criteria as a regular member (i.e. Must live in the unincorporated area of the township)
- Term = to be determined by the BOT.
- Shall take place of an absent regular member at any meeting
- May vote on any matter on which the absent member is authorized to vote
- Vacancies shall be filled by the BOT and shall be for the unexpired term
REMOVAL OF MEMBER
(R.C. § 519.04)

- Removable for cause:
  - nonperformance of duty
  - misconduct in office, or
  - other cause by the BOT,
- Requires written charges be filed with the BOT and be served on the member
- Requires a public hearing on the charges within 60 days after charges filed
- The member shall be given an opportunity to be heard and answer the charges.
- Upon the approval of a majority of the BOT, the member may be suspended from participating as a member of the ZC before the hearing
  - Suspension ≠ vacancy
- Suspension or removal may be appealed under R.C. Chapter 2506
RULES AND RECORDS
(R.C. § 519.05)

- ZC is required to:
  - Organize,
  - Adopt rules for the transaction of its business, and
  - Keep a record of its actions and determinations.
ZC may:

- Employ or contract with such planning consultants and executive and other assistants as it deems necessary
  - Limit = within the limits of the moneys appropriated by the BOT for the purpose
  - May not employ trustee

- Make use of such information and counsel as is available from appropriate public officials, departments, and agencies and such officials, departments, and agencies having information, maps, and data shall make them available for the use of the ZC.

- May request planning commission prepare or make available to the ZC a zoning plan, including text and maps
MONEY
(R.C. § 519.05)

- Subject to BOT approval and provision, ZC members may be allowed:
  - Expenses
  - Compensation, or
  - Both
ZONING CHANGE/AMENDMENT FLOWCHART - R.C. § 519.12

Initiation

Motion of BZC → Resolution of Board of Township Trustees → Application Filed by Affected Property Owner/Leasee (Fee May Be Required)

Within 5 days

Received by BZC

County Regional Planning Commission for Review

Approx. 30 days

Within 5 days

Notice to Property Owners*

At Least 10 Days Prior to Hearing

At Least 10 Days Prior to Hearing

Published Notice of Public Hearing*

Public Display of Proposed Amendment (At Least 10 Days Prior to Hearing)

Within 120 Days Maximum

BZC Public Hearing (20-40 Days after Application/Certification Received)

Within 30 Days

BZC Recommendation to Board of Township Trustees (Including County Regional Planning Commission Recommendations)

Application to Director of Transportation for Review (If Required by RC 5511.01)

30-60 Days from Date of Application/Certification

*Notice must be published at least once in one (1) or more newspapers of general circulation in the township at least ten (10) days prior to the public hearing and include the time, date and place for the public hearing and all information required by R.C. § 519.12(C). If ten (10) or fewer parcels are included within a rezoning or rezoning notice, including the time date and place of the public hearing and all information in R.C. § 519.12(C), must also be mailed via first class mail at least ten (10) days prior to the public hearing to all owners of property within and contiguous to and directly across the street from the area proposed to be rezoned or rezoned to the addresses of those owners appearing on the county auditor's current tax list. If ten (10) or more parcels are included within the rezoning or rezoning notice, or if the amendment alters the text of the zoning resolution, the published notice must include the time, date, and place of the public hearing and all of the information in R.C. § 519.12(D).
Board of Trustees Set Date for Public Hearing**

Published Notice of Public Hearing
(At Least 10 Days Prior to Hearing)

Public Display of Proposed Amendment
(At Least 10 Days Prior to Hearing)

Board of Township Trustees Public Hearing (within 30 Days after Amendment Received from BZC)

Not More Than 20 Days

Board of Trustees Makes Decision

Amendment Adopted
(Majority Vote of Board Required)

Deny or Modify Recommendation
(Majority Vote of Board Required)

Referendum Petition Signed by equivalent of 8% of Voters in Township Voting for Governor at Last Election for Governor is submitted within 30 Days

Amendment Takes Effect 30 Days Later

Vote at Next Primary or General Election (at least 90 Days Later)

** Note that notice must be published at least once in one or more newspapers of general circulation in the township at least ten (10) days prior to the public hearing and include the time, date, and place for the public hearing and all information required by R.C. § 519.12(9) or R.C. § 519.12(10) depending on whether ten (10) or fewer or more than ten (10) parcels or a test amendment are the subject of the proposed amendment.
NOTICE CHECKLISTS

Notice Requirements Revealing/Amendment to Zoning Resolution

ZC – 10 or Fewer Parcels
R.C. § 519.12(A)(2) and (C)

Date: ____________________________
Project: __________________________

Means:
• Published in a newspaper of general circulation
• Posted (C/Class)

Timing:
• At least one (10) days before the date of the hearing

NOTICE REQUIREMENTS REVEALING/AMENDMENT TO ZONING RESOLUTION

ZC – Test Amendment or More Than 10 Parcels
R.C. § 519.12(A)(2) and (D)

Date: ____________________________
Project: __________________________

Means:
• Published in a newspaper of general circulation

Timing:
• At least ten (10) days before the date of the hearing

NOTICE REQUIREMENTS REVEALING/AMENDMENT TO ZONING RESOLUTION

BOT – 10 or Fewer Parcels
R.C. § 519.12(E)(3) and (F)

Date: ____________________________
Project: __________________________

Means:
• Published in a newspaper of general circulation

Timing:
• At least ten (10) days before the date of the hearing

NOTICE REQUIREMENTS REVEALING/AMENDMENT TO ZONING RESOLUTION

BOT – Test Amendment or More Than 10 Parcels
R.C. § 519.12(E)(3) and (G)

Date: ____________________________
Project: __________________________

Means:
• Published in a newspaper of general circulation

Timing:
• At least ten (10) days before the date of the hearing

Any other information required by the city.
BOARD OF ZONING APPEALS
(R.C. §§ 519.13-519.15)
LIMITED AUTHORITY
(R.C. §§ 519.14)

- Quasi-judicial board (i.e. court-like)
- Hears and decides:
  - Appeals of alleged error in any order, requirement, decision, or determination made by an administrative official in the enforcement of R.C. § 519.02-519.25 (i.e. zoning) (R.C. § 519.14(A))
  - Variances (2 Types = Area and Use) (R.C. § 519.14(B))
  - Conditional Uses (R.C. § 519.14(C))
REGULAR MEMBERS
(R.C. § 519.13)

- BOT appoints
- 5 members
- Must live in the unincorporated area of the township included in the area zoned
- Term = 5 years, arranged so term of 1 member will expires each year.
- Members serve until a successor is appointed and qualified
- Vacancies shall be filled by the BOT and shall be for the unexpired term
ALTERNATE MEMBERS
(R.C. § 519.13)

- BOT may appoint 2 alternate members
- Shall meet the same appointment criteria as a regular member (i.e. Must live in the unincorporated area of the township included in the area zoned)
- Term = to be determined by the BOT.
- Shall take place of an absent regular member at any meeting
- May vote on any matter on which the absent member is authorized to vote
- Vacancies shall be filled by the BOT and shall be for the unexpired term
REMOVAL OF MEMBER
(R.C. § 519.13)

- Removable for cause:
  - nonperformance of duty
  - misconduct in office, or
  - other cause by the BOT,

- Requires written charges be filed with the BOT and be served on the member

- Requires a public hearing on the charges within 60 days after charges filed

- The member shall be given an opportunity to be heard and answer the charges.

- Upon the approval of a majority of the BOT, the member may be suspended from participating as a member of the BZA before the hearing
  - Suspension ≠ vacancy

- Suspension or removal may be appealed under R.C. Chapter 2506
RULES AND RECORDS
(R.C. § 519.)

- The township board of zoning appeals shall organize and adopt rules in accordance with the zoning resolution.
- All meetings of the board of zoning appeals shall be open to the public.
- The board of zoning appeals shall keep minutes of its proceedings showing the vote of each regular or alternate 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 township trustees and be a public record.
RESOURCES
(R.C. § 519.13)

- BZA may:
  - Employ such executive, professional, technical, and other assistants as it considers necessary.
    - Limit = within the limits of the moneys appropriated by the BOT for the purpose
Subject to BOT approval and provision, BZA members may be allowed:

- Expenses
- Compensation, or
- Both
MEETINGS AND HEARINGS
(R.C. § 519.15)

- Meetings:
  - Shall be held at the call of the chairperson, and at such other times as the board determines.

- Hearings:
  - BZA shall fix a reasonable time for the public hearing
  - Give at least 10 days’ notice in writing to the parties in interest
  - Publish notice 1X in one or more newspapers of general circulation in the county at least 10 days before the date of hearing]
  - Decide the appeal within a reasonable time after it is submitted.
  - Any person may appear in person or by attorney
  - The chairperson, or in the chairperson's absence the acting chairperson, may administer oaths
  - BZA may compel the attendance of witnesses.

- The board of township trustees may require a person making an appeal to pay a fee to defray the cost of advertising, mailing, and other expenses.
APPEALS
(R.C. §§ 519.14(A) and 519.15)

Appeals to the board of zoning appeals may be taken by any person aggrieved or by any officer of the township affected by any decision of the administrative officer.

Must be taken within 20 days after the decision

File notice of appeal specifying the grounds with:
- Officer from whom the appeal is taken and
- BZA

Officer then transmits to the board of zoning appeals all the papers constituting the record upon which the action appealed from was taken.
 CONDITIONAL USE
(R.C. § 519.14(C))

- Must be provided for in ZR
- Must meet criteria for conditional use in ZR
AREA VARIANCE
(R.C. § 519.14(B))

- Variance from ZR standards (i.e. setback, height restriction, etc.)
- Standard = Practical Difficulties
- Apply 7 Duncan v. Middlefield Factors
1. Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.

2. Whether the variance is substantial.

3. Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”

4. Whether the variance would adversely affect the delivery of governmental services.

5. Whether the property owner purchased the property with knowledge of the zoning restriction.

6. Whether the problem can be solved in some manner other than the granting of a variance.

7. Whether the variance preserves the “spirit and intent” of the zoning requirement and whether “substantial justice” would be done by granting the variance.
USE VARIANCE
(R.C. § 519.14(B))

- Variance from permitted or conditional uses allowed by ZR
- Standard = Unnecessary Hardship
  - Unnecessary hardship occurs when it is not economically feasible to put the property to a permitted use under its present zoning classification due to characteristics unique to the property. Unnecessary hardship does not exist unless the property is unsuitable for any of the uses permitted by the ZR
  - Avoids a “taking”
DECISION
(R.C. § 519.14)

- BZA may:
  - **APPEAL:** Reverse or affirm, in whole or in partly, or may modify the order, requirement, decision, or determination appealed from
  - **VARIANCE OR CONDITIONAL USE:** Make such order, requirement, decision, or determination as ought to be made

- BZA should make written findings of fact and conclusion
QUESTIONS????

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