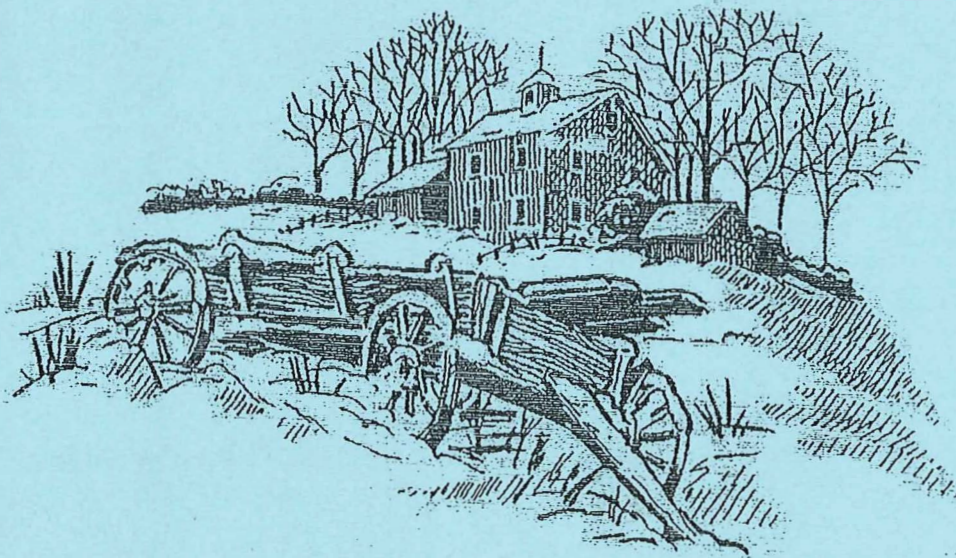


Spencer Township

Zoning Resolutions



SPENCER TOWNSHIP ZONING RESOLUTION

TABLE OF CONTENTS

ARTICLE I Title, Authorization, Purpose ----- 1

ARTICLE II General Provisions ----- 2

ARTICLE III District Regulations ----- 10

ARTICLE IV Sign Regulations ----- 16

ARTICLE V Conditional Zoning Certificates ----- 18

ARTICLE VI Oil and Gas Regulations ----- 24

Standards and Specifications for
EXHIBIT "A" Perimeter Dikes ----- 27

ARTICLE VII Nonconforming Uses ----- 29

ARTICLE VIII Administration and Enforcement -----31

ARTICLE IX Validity and Separability ----- 39

ARTICLE X Repealer ----- 39

ARTICLE XI Effective Date ----- 40

ARTICLE XII Definitions ----- 41

Procedures Regarding
APPENDIX A Amendments to the Resolution ----- 47

APPENDIX B ORC Sections Regarding Farm
Markets ----- 55

APPENDIX C Other Pertinent ORC Sections ----- 59

APPENDIX D Fee Schedule ----- 68

NOTICE PURCHASERS OF THIS BOOK

Please be advised that at any one time the Resolution in this book may have been amended. Therefore, please contact the Zoning Inspector or the Township Fiscal Officer to determine what if any changes have been made.

ARTICLE I

TITLE, AUTHORIZATION, PURPOSE

Section 101 TITLE

This Resolution shall be known as the Spencer Township Zoning Resolution.

Section 102 Authorization

The authority for establishing “The Spencer Township Zoning Resolution” is derived from Chapter 519 of the Ohio Revised Code.

Section 103 Plan

We set forth this statement to explain our reasoning for the following zoning resolutions for Spencer Township.

It is our intent to make our zoning fair, reasonable, and sound to enable us to maintain our rural character in accordance with the wishes of the community. The Township will support such home occupations and conditional zoning as allowed by this code in an attempt to meet the needs of the community members and to maintain our rural character.

Section 104 Purpose

In order to promote and protect the health, safety, and morals of the unincorporated area of Spencer Township, Medina County, Ohio and to insure orderly growth and development in said Township and to maintain the rural residential character, the Board of Township Trustees has found it necessary and advisable to adopt a comprehensive plan of zoning which will regulate the location, height, bulk, number of stories, and size of buildings and other structures, percentages of lot areas which may be occupied, building setback lines, size of yards, and other open spaces; the use of buildings and other structures and the uses of the land for residence or other permitted purposes; and for such purposes to maintain a rural residential community and to provide for the administration and enforcement of such regulations.



ARTICLE II

GENERAL PROVISIONS

Section 201 Establishment of Districts

The unincorporated territory of Spencer Township, Medina County, Ohio, is hereby divided into districts or zones as follows:

R-1 Low Density Residential District

Section 201.1 Uniformity of Regulations

All regulations shall be uniform for each class or kind of building or other structure, or use, throughout each district or zone.

Section 202 Zoning Districts Map

The districts and their boundary lines are indicated upon a map entitled "Zoning Districts Map of Spencer Township, Medina County, Ohio," which map, together with all notations, references, and other matters shown thereon, is hereby located at the Spencer Township Trustees' Office and made a part of this Resolution. Said map shall be maintained at the Office of the Township Clerk, and shall show all amendments or changes made thereon.

Sections 202.1 Interpretation of District Boundaries

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

- Where district boundaries are indicated as approximately following the center line or right-of-way line of streets or the center line or right-of-way lines of highways, such lines shall be constructed to be such district boundaries.

Section 203 Regulations Applicable to All Districts

Section 203.1 Private Ponds or Lakes

- A. Private ponds or lakes containing over one and one-half (1-1/2) feet of water depth shall be considered as structures for the purpose of permits. No pond/lake shall be constructed such that its surface

area or embankments are located on more than one (1) lot. All structures and/or embankments associated with a pond/lake shall be located at least twenty-five (25) feet from all property lines, easements, and eighty (80) feet from the centerline of the street. In no case shall a pond/lake be located closer than twenty-five (25) feet to a principal building. For purposes of setback and yard requirements, the point of measurement for the pond/lake (other than structures) shall be the design high water line, as depicted on the submitted plans, or the base of any embankment where it reaches the normal grade line.

Ponds/lakes shall meet standards and specifications of the Medina County Soil and Water Conservation District and Chapter 1521 of the Ohio Revised Code. Lakes/ponds used for domestic water supply shall also meet the requirements of Chapter 2 of the Medina County Sanitary Code.

Upon making application for a zoning permit, the applicant is required to submit to the Zoning Inspector, a copy of the proposed pond/lake plans which have been reviewed and stamped by the Medina County Soil and Water Conservation District, and by the Medina County Health Department, if applicable in the case of ponds/lakes for domestic water supply.

The Zoning Inspector shall inspect ponds and lakes during their construction and shall require that all construction conforms to the approved plans. A fee shall accompany the application for a zoning permit for a pond/lake. Fees are determined by Resolution of the Spencer Township Trustees.

B. Fire Ponds

If the pond/lake is feasible for use of a dry hydrant and the pond/lake owner agrees to use and purchase, the dry hydrant will be maintained by the Spencer Community Fire District.

Section 203.2 Uses Exempt for Regulation

A. Agricultural Uses

1. Except as set forth below nothing contained in these regulations shall prohibit the use of land for agricultural purposes or the construction or use of buildings or structures incidental to the use for agricultural purposes of the land on which such buildings or structures are located,

and a zoning certificate shall not be required for such use, building, or structure.

The principal residential dwelling, however, shall conform to the regulations contained in this Resolution.

For the purpose of this Resolution, "Agriculture" includes farming; ranching; aquaculture; apiculture; horticulture, viticulture, animal husbandry, including, but not limited to the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturages; any combination of the foregoing; the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to such husbandry or production.

2. Farm markets are specifically regulated pursuant to provisions set forth in Section 301.2A3.

B. Public Utilities and Railroads

Nothing contained in these regulations shall prohibit the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business except as provided in Section 519.211 of the Ohio Revised Code.

Section 203.3 Required Compliances

No building shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used in a manner which does not comply with all of the district provisions established by this Resolution. Anything not specifically permitted herein should be considered prohibited, until by amendment, such use has been included into this Resolution.

Section 203.4 Nuisance Prohibited

No use shall be permitted or authorized to be established which, when conducted in compliance with the provisions of this Resolution, and any additional conditions and requirements prescribed, is or may become hazardous, noxious, or offensive due to emission of odor, dust, smoke, fumes, cinders, gas, noise, vibrations, electrical interference, refuse matter, water-carried waste, or household discards.

Section 203.5 General Regulations of Lots

A. "Effective May 1, 2004, any approved, but unrecorded, lot splits not meeting current Spencer Township Zoning Resolutions will not be issued a zoning permit"

B. One Dwelling Unit Per Lot

No more than one dwelling shall be permitted on any one lot. Every single-family dwelling unit shall be located on a lot having a minimum of two hundred (200) feet continuous frontage on a public or private street and having a minimum of two hundred (200) feet continuous lot width on and from the center line of the street to the building setback line of said dwelling unit. Every two-family dwelling unit shall be located on a lot having a minimum of three hundred (300) feet continuous frontage on a public or private street and having a minimum of three hundred (300) feet continuous lot width on and from the center line of the street to the building setback line of said dwelling unit.

C. Required Lots, Yards, and Open Space Unaffected by Change in Ownership

No space which, for the purpose of the building, has been counted or calculated as part of a side yard, rear yard, front yard, or other open space required by this Resolution, may, by reason of change in ownership or otherwise, be counted or calculated to satisfy the yard or other open space requirement of or for any other building.

D. Projections into Yard Areas

Every part of a required yard shall be open to the sky unobstructed, except for accessory buildings in a rear yard, except for parking of automobiles as regulated by ARTICLE III herein, except for the ordinary projections of skylight, sills, belt-courses, cornices, and ornamental features projecting not to exceed twelve (12) inches,

and except for fences constructed in compliance with Section 203.6E of this Resolution.

Terraces, uncovered porches, platforms, and ornamental features which do not extend more than two (2) feet above the level of the ground or first story, may project into a required side yard, provided these projections be distance at least five (5) feet from the adjacent lot line. The ordinary projections of chimneys or flues are permitted into the required side, rear, and front yards.

An open, unenclosed porch or paved terrace may project into the front yard for a distance not to exceed ten (10) feet.

E. Corner Lots

1. Required Yards Facing Street

Corner lots in all directions are required to have the minimum front yard requirements, as indicated in that district, facing both streets.

2. Visibility at Corner Lots

No Obstruction to view in excess of two (2) feet in height shall be placed on any corner lot within a triangular area formed by the street right-of-way lines and a line connecting them at points thirty (30) feet from the intersection of the street lines, except that shade trees which are pruned at least eight (8) feet above the established grade of the roadway so as not to obstruct clear view by motor vehicle drivers are permitted.

F. Lot Area Exceptions for Certain Existing Substandard Lots

Any legally existing lot or parcel of land under one ownership and of record at the time of the adoption of this amendment may be used as a building site, provided such was a buildable site on the date of the adoption of this amendment, even if of less area or width than required by these regulations for the district in which it is located, subject however to all regulations for the district in which it is located, Medina County Health Department approval, and all other general regulations of this Zoning Code.

G. Outdoor Storage

Storage of materials, equipment, and supplies shall take place within a completely enclosed building except as otherwise provided in this Resolutions.

Section 203.6 General Regulation of Structures and Construction

A. Construction Begun Prior to Establishment of Zoning

Nothing contained in these regulations shall hinder the legally permitted construction of a building or prohibit its use where construction has started before the effective date of these regulations and provided further that such building shall be completed within two (2) years from the date of passage of the regulations.

B. Permitted Height Exceptions

1. Except as specifically state in other parts of these regulations, no building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit hereinafter established for the district in which the building is located, except that penthouse or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building and fire or parapet walls, skylights, towers, steeples, stage lofts and screens, flagpoles, chimneys, smokestacks, water tanks or similar structures may be erected above the height limits herein. No such structure may be erected to exceed by more than fifteen (15) feet the height limits of the district in which it is located; nor shall such structure have a total area greater than twenty-five (25) percent of the roof area of the building; nor shall such structure be used for any purpose other than a use incidental to the main use of the building.
2. Private communication aerial/masts (such as CB antennae) may be erected to a height of seventy-five (75) feet provided the aerial is set back a distance from the side or

rear property line equal in length to the height of the antennae minus the width of the minimum side or rear yard in that zoning district (i.e., a 75 foot antennae would have to be set back 60 feet from the side lot line in the R-1 district). This requirement applies only where the minimum side or rear yard requirement is less than the antennae height. The setback of an antennae from the existing principal building on an adjacent property shall be greater than the height of the proposed antennae.

3. Churches and temples may be erected to a height not to exceed seventy-five (75) feet, if the building is set back from each yard line at least one (1) foot for each foot of additional building height above thirty-five (35) feet.

C. Temporary Buildings

Temporary buildings for use incidental to construction work may be erected. However, such temporary buildings shall be removed upon the completion or abandonment of the construction work.

D. Outdoor Advertising Signs

Outdoor advertising signs shall be erected subject to the provisions of Article IV.

E. Fences, Walks, and Hedges

Fences, walks, and hedges may be permitted in any required yard, or along the edge of any yard, provided that no fence, wall, or hedge along the sides of front edge of any front yard shall extend into the road right-of-way.

Fences, walls, and hedges may be permitted along the side or rear lot lines to a height of not more than six (6) feet above the grade.

Informal planting may be higher than six (6) feet.

F. Accessory Building in Residential Districts

1. An accessory building attached to the principal building, on a lot, shall be made structurally a part thereof, and shall

comply in all respects with the requirements of these Regulations applicable to the principal building.

2. Accessory Building shall:
 - (a) Not be located within fifteen (15) feet of the side or rear lot line; and,
 - (b) Not be located within twenty (20) feet of a dwelling on the lot.
 - (c) Meet minimum front set back one hundred fifty (150) feet from the centerline of the
3. A Permit for all accessory buildings will be required.

G. Pools

1. Shall not be located within fifteen (15) feet of the side or rear lot line.
2. Front setback shall be a minimum of one hundred fifty (150) feet from the centerline of the road.
3. Shall be exempt from the minimum setback from the dwelling.

H. Driveways and Parking

1. Driveways must be ten (10) feet wide for each dwelling.
2. Driveways must be a minimum of ten (10) feet from the lot line at the road right-of-way.
3. All other sections of this Resolution must be complied with.

ARTICLE III
DISTRICT REGULATIONS

Section 301 R-1 Low Density Residential District

Section 301.1 Purpose

The purpose of this district is to accommodate residential development at a low density that will promote the continuation of the predominately rural residential character of Spencer Township.

Section 301.2 Uses

Within an R-1 Residential District, no building, structure, or premises shall be used, arranged to be used, or designed to be used except for one or more of the following uses and each shall require a Zoning Certificate:

A. Permitted Uses

1. Single-family dwelling.
2. Two-family dwelling
3. Accessory buildings incidental to the principal use and which do not include any activity conducted as business.
4. Type 1 Home Occupations:

Any person may maintain an office or may carry on a customary home occupation in the dwelling house used by him as his private residence if it complies with the following requirements:

- a. Such use shall not involve any extension, alteration, or modification of said dwelling.
- b. Such use shall not involve any outward evidence of such use, including outside storage of any kind related to the use, except not more than one (1) sign as authorized in Article IV of this Resolution will be permitted. Only commodities produced on the

premises may be sold on the premises. No displays may be visible from the street.

- c. Not more than twenty-five (25) percent of the gross floor of the dwelling shall be devoted to the use.
 - d. Permitted home occupations must comply with all other sections of this Resolution.
- 5. Signs, as regulated by Article IV hereof.
 - 6. Farm markets provided that such market facility and any required parking related thereto are so located and set back from the street as not to create a traffic hazard. For farm market, refer to Definitions and Appendix B.

B. Conditionally Permissible Uses for R-1 Low Density Residential District

The Zoning Board of Appeals may issue Conditional Zoning Certificates for uses listed herein, pursuant to Article V.

- 1. Governmentally owned and/or operated recreational uses particularly subject to Section 501.2B, subsections 1, 2, and 4.
- 2. Recreational uses other than those governmentally owned and/or operated such as swimming pools, golf courses, miniature golf courses, tennis clubs, riding academies, and camps, including commercial activities related thereto, subject to Article V, in particular 501.2B, subsections 1, 2, 4, 6, 7, and 8, but excluding drive-in theaters and commercial amusement parks.
- 3. Extraction of natural resources particularly subject to Section 501.2B, subsections 1, 2, 4, and 5.
- 4. Public and parochial schools particularly subject to Section 501.2B, subsections 1 and 2.
- 5. Churches particularly subject to Section 501.2B, subsections 1 and 2.
- 6. Cemeteries particularly subject to Section 501.2B, subsections 1, 2, and 4.

7. Publicly owned and/or operated buildings and facilities other than those listed above particularly subject to Section 501.2B, subsections 1 and 4.

8. Type 2 Home Occupation:

Only on the following terms and conditions:

- a. No person who is not a resident of the premises may utilize said property for parking any commercial vehicle or equipment, or may participate in any activity related to the business on site as an employee or volunteer.
- b. No equipment, process, materials, or chemicals shall be used which create offensive noise, vibrations, smoke, dust, odor, heat, glare, X-rays, radiation, or electrical disturbances.
- c. Not more than twenty-five percent (25%) of the gross floor area of the dwelling, nor more than twenty-five percent (25%) of any single lot or parcel shall be devoted to any use related to the business activity.
- d. No activity involved in the business other than the parking of equipment shall be visible from any public way or adjacent property.
- e. The external appearance of the building on the property and the property itself, shall not be altered in such a way that a non-residential appearance inconsistent with the area is created.
- f. Signs as regulated by Article IV hereof.
- g. The activity conducted must be clearly incidental and subordinate to the land use for residential purposes.
- h. No traffic shall be generated by such use in greater volume or intensity than would normally be expected in the neighborhood.

- i. All commercial vehicles or commercial equipment shall be parked behind the residence on the premises, and behind a line parallel to the rear of any residence on the property adjoining said premises.
- j. No equipment shall be parked in any required side yard.
- k. No more than three (3) pieces of commercial equipment may be parked pursuant to Section i above at any one time.
- l. An additional two (2) vehicles or two (2) pieces of equipment may be parked, if such are out of sight of any public way or adjoining property.

9. Buildings, Earth-sheltered:

Refer to the definition for Building, Earth-sheltered in the Appendix.

Section 301.3 Area, Yard, and Height Regulations

A. Minimum Lot Area

- 1. Two (2) acres per single family dwelling.
- 2. Three (3) acres for two-family dwelling.

B. Minimum Lot Width

- 1. Two hundred (200) feet for single family dwelling units.
- 2. Three hundred (300) feet for two-family dwelling units.

C. Minimum Frontage

- 1. Two hundred (200) feet per single family dwelling units.
- 2. Three hundred (300) feet per two-family dwelling units.

D. Minimum Front Yard Depth from the Centerline of Street

One hundred fifty (150) feet for any structure.

E. Minimum Side Yard Width

Twenty-five (25) feet.

F. Minimum Rear Yard Dept

Fifty (50) feet

G. Minimum Living Floor Area Per Dwelling Unit

1. Each single-family dwelling shall have the following minimum living floor area:
 - A. One, two, or three bedroom dwelling-thirteen hundred fifty (1,350) square feet.
 - B. Four or more bedroom dwelling-fifteen hundred (1,500) square feet.
 - C. Foundation-minimum thirteen hundred fifty (1,350) square feet for one story dwelling, one thousand (1,000) square feet for one and one-half or two story dwellings.
2. Minimum living floor area per family shall not include porches, steps, terraces, breezeways, attached or built-in garages, basements, or other attached structures not intended for human occupancy.
3. A residential building, other than an earth-sheltered home, must be at least one (1) story above ground level and shall have a complete foundation installed to a depth below frost line.

H. Maximum Height of Building

Thirty-five (35) feet.

Section 301.4 Parking Requirements

- A. All dwellings shall provide parking space off the nearest street or road and outside of the public right-of-way, together with means of

ingress and egress thereto, for not less than two (2) autos per dwelling unit.

- B. All roadside stands and conditionally permitted uses shall provide sufficient parking facilities outside the street right-of-way. Such parking areas shall be separated from adjacent lot lines by a twenty-five (25) foot strip of land.

ARTICLE IV

SIGN REGULATIONS

Section 401 Sign Regulations

The purpose of this article is to provide for the use, location, and size of signs and to regulate their installation and maintenance.

Section 401.1 Permitted Signs

- A. The following signs are allowed:
1. One (1) non-illuminated sign advertising the sale or lease of the lot or building on which it is located.
 2. One (1) sign appropriate to a public or semi-public building for the purpose of displaying the name and activities or services therein provided.
 3. Signs incidental to legal process and necessary to the public welfare.
 4. One (1) free-standing sign and/or one (1) sign attached to an existing structure.
 5. Billboards. Billboards are permitted in all districts zoned for industrial, business, or trade, or on land used for agricultural purposes.
- B. Sign Regulations
1. No sign may be larger than sixteen (16) square feet in area, except as set forth in 3 below.
 2. Only highway safety signs may extend into the street right-of-way.
 3. Billboards shall be located so as to maintain the same minimum front, side and rear yard requirements as for buildings in the district involved, except that no such signs shall be located closer than five hundred (500) feet to any dwelling. Nor should any such sign be permitted closer than

five hundred (500) feet to a public park, public or parochial school, library, church, hospital or similar institution. The maximum area of such sign shall be three hundred (300) square feet. The maximum height of such sign shall be twenty-five (25) feet. Such signs visible to approaching traffic on either or both sides of the right-of-way shall have a minimum spacing of five hundred (500) feet.

4. All signs except as set forth in 3 above shall meet the following setback requirements:

- a. Fifty-five (55) feet from the road center.
- b. Ten (10) feet from any side or rear lot line.

5. Permits

All signs shall require a permit, except for:

1. Political signs.
2. For sale, for rent, and for lease signs that are non-illuminated and sixteen (16) square feet or less in sign face area.
3. Signs incidental to legal process and necessary to the public welfare.

ARTICLE V

CONDITIONAL ZONING CERTIFICATES

Section 501 Purpose

Rather than assign all uses to special individual and limited zoning districts, it is important to provide controllable and reasonable flexibility in requirements for certain kinds of uses that allow practicable latitude for the investor, but that will at the same time maintain adequate provision for the security of the health, safety, convenience, and general welfare of the community's inhabitants.

In order to accomplish such a dual objective, provision is made in this Resolution for a more detailed consideration of each of certain specified activities as may relate to proposed conditions of location, design, size, operation, intensity of use, generation of traffic and traffic movement, concentration of populations, etc.

Activities possessing these particular unique characteristics are designated as conditionally permissible uses and are permitted through the issuance of a "Conditional Zoning Certificate" with such conditions and safeguards attached as may be deemed necessary for the protection of the public welfare.

The Board of Zoning Appeals, as hereinafter created, may authorize the issuance of such conditional zoning certificates as provided for in this resolution, using the following procedures.

Section 501.1 Procedures for Making Application

A. Submission

An application shall be submitted through the Zoning Inspector to the Board of Zoning Appeals on a form designed for that purpose. The Board of Zoning Appeals shall be required to refer a copy of the proposed conditional zoning certificate to the Zoning Commission and to the Board of Trustees for recommendations. Said recommendations of the Spencer Township Zoning Commission and of the Board of Trustees shall be returned to the Board of Zoning Appeals within ten (10) days. Each application shall be accompanied by the payment fee, as indicated in Appendix D.

B. Data Required with Application

1. Form supplied by Zoning Inspector, completed by applicant.
2. Site plan, plot plan, or development plan, drawn to a minimum scale of one (1) inch = one hundred (100) feet of the total property involved showing the location of all existing and proposed structures, the type of buildings and their uses, and the location of all abutting streets. The plan submitted shall also include all property lines and structures and their uses within two hundred (200) feet of the applicant's property.
3. Complete plans and specifications for all proposed development and construction.
4. A statement supported by substantiating evidence regarding the requirements enumerated in Sections 501.2A-501.2B, inclusive.

C. Review by Board of Zoning Appeals

The Board of Zoning Appeals shall review the proposed development, as presented on the submitted plan and specifications in terms of the standards established in this Resolution.

D. Hearing

After adequate review and study of any application, the Board of Zoning Appeals shall hold a public hearing or hearings upon every application after at least one (1) publication in a newspaper of general circulation in the Township at least ten (10) days prior to the date of the hearing. Such notice shall indicate the place, time, and subject of the hearing.

E. Issuance and Revocation of Conditional Zoning Certificate

Only upon conclusion of hearing procedures relative to a particular application may the Board of Zoning appeals authorize the issuance of a Conditional Zoning Certificate. The Board of Zoning Appeals shall notify the Zoning Inspector in writing to either issue or deny the conditional zoning certificate. The breach of any condition, safeguard, or requirement may invalidate the certificate granted. The Board, if it intends to revoke the permit, shall give the permit

holder notice of intent to revoke, and an opportunity to appear and defend against revocation.

F. Reapplication

No application for a “Conditional Zoning Certificate” which has been denied wholly or in part by the Board of Zoning Appeals of the Township shall be resubmitted for reconsideration unless the application for said certificate reflects newly discovered evidence, not considered by the Board in the previous hearing, or changed circumstances, which materially change the conditions existing at the time of the previous application. Application for hearing shall set forth the grounds on which is believed that the resubmittal meets one or more of the criteria set forth above.

- G.** A Conditional Zoning Certificate for a use permitted under this subsection shall be issued for a one year period only. After the one year period has elapsed, a new conditional zoning certificate shall be required. The Zoning Board of Appeals may issue a new certificate upon the determination that the said use has been and is being operated according to the specifications of the Zoning Resolution and the previous conditional zoning certificate, and that conditions of the area have not so changed that the use can no longer be found to be harmonious with the existing or intended use of the area, even with the addition of additional control criteria. The Board may make additional requirements for the continued operation of a use as a prerequisite for the reissuance of the conditional zoning certificate, if it finds changed circumstances necessitate further regulation to meet the guidelines set forth herein.

Section 501.2 Basis of Determination

The Board of Zoning Appeals shall establish that general standards and the specific standards pertinent to each use indicated herein shall be satisfied by the completion and operations of the proposed conditional use. The Board of Zoning Appeals may also impose such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for ensuring that the intent and objectives of the Resolution will be observed.

A. General Standards for All Conditional Zoning Certificates

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 showing that such use in the proposed location:

1. Will be harmonious with and in accordance with the general objectives, or with any specific objective of the Township comprehensive zoning plan of current adoption;
2. 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;
3. Will not be hazardous or disturbing to existing or future neighboring uses;
4. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, or schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service;
5. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
6. Will not involve uses, activities, processes, materials, and equipment and conditions of operation that will be detrimental to persons, property, or the general welfare by reason of excessive products of traffic, smoke, fumes, glare, odors, or noise of any nature;
7. Will be consistent with the intent and purpose of this Resolution;
8. Will be in compliance with the Medina County Subdivision Regulations, when applicable, the Board of Health standards, and the County Building Code;
9. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets or roads;

10. Will be developed with consideration given to minimizing removal of trees and change of topography;
11. Will protect as much as possible the destruction, loss, or damage of natural, scenic, or historic features of major importance.

B. Specific Regulations Pertaining to Certain Conditionally Permissible Uses

1. All structures and activity areas shall be located at least sixty (60) feet from all property lines.
2. The Zoning Board, with the approval of the Board of Trustees, shall have the power to determine, subject to the guidelines set forth herein, to establish the need for and amount of plant materials, walls or fences, or any combination of these on any property line of land under consideration. The plans and specifications, including density and height figures for the overall site development, shall include the proposed arrangement of such plantings and structures for a non-residential use.
3. There shall be no more than one directional advertisement oriented to each abutting road identifying the activity.
4. Such structures should be located on major thoroughfares or at intersections of major and/or secondary thoroughfares.
5. All permitted installations shall be maintained in a neat, orderly condition so as to prevent injury to any single property, any individual, or to the community in general.
6. Shall be enclosed by a fence six (6) feet or more in height for the entire periphery of the development. Fences shall be adequate to prevent trespass and shall be placed no closer than fifty (50) feet to the top or bottom of any slope. No sand, gravel, or other material shall be removed or stored within sixty (60) feet of any lot line not owned or controlled by the developer or operator of said business or his agent, nor shall such extraction be conducted closer to any lot line or street so that the areas contiguous thereto do not have adequate lateral support.

All work conducted in connection with such operations shall be done between the hours of 8:00 a.m. and 8:00 p.m.

No rehabilitated slope shall exceed an angle with the horizontal of twenty-five (25) degrees.

All areas within any single development shall be rehabilitated progressively as they are worked out or abandoned to a condition of being entirely lacking in hazards, inconspicuous, and blended with the general surrounding ground forms so as to appear reasonably natural. Areas shall be completely and continually drained of water when not in use or not supervised by a watchman. All slopes and banks shall be reasonably graded and treated to prevent erosion or any other potential deterioration. Such operations shall be conducted so as not to leave or cause to exist spoil banks.

Truck routes shall be established for movement in and out of the development in such a way that it will minimize the wear on public streets and prevent hazards and damage to other properties in the community.

All operations employing the use of explosives shall be subject to inspection by the Township but such shall not constitute approval nor render the Township liable for damages. In this regard, the owner, lessee, their agents or such other persons as might have control or interest in such mineral extraction operations shall pay the reasonable cost of all Township inspections, if any be required, during said operations. A bond shall be filed with the Township Clerk on a form furnished by the Clerk, payable to the Township and conditioned on faithful performance of all requirements contained in this section. The amount of the bond shall be determined by the Township Trustees based upon current costs and the amount of area involved.

- 7. The commercial activity shall at all times be incidental to the main recreational activity.**
- 8. No outside commercial activities shall be engaged in after 9:00 p.m.**

ARTICLE VI
OIL AND GAS REGULATIONS

Section 601 Purpose

Spencer Township is known to be the location of oil and natural gas deposits. This section sets forth certain requirements which will insure that any operations incidental to the exploration, extraction, or storage of oil and gas take place in a manner wholly compatible with the surrounding land uses in the Township and which do not endanger the public health, safety, and welfare.

- A. The following provisions are adopted to prevent and/or mitigate possible fire and explosion damage:
1. For Fire Department use, there shall be filed with the Township Zoning Inspector and the Fire Department when production commences:

A plat reflecting the point of ingress and egress for the site from a designated public road, as well as the location of the wellhead(s), in relation to storage tanks, lines, and all power shutoffs and oil flowline shutoffs.
 2. Information required by State law, such as emergency numbers, shall also be posted at the well site and provided to the Township Zoning Inspector and the Fire Department.
 3. The truck loading area must be outside the road right-of-way without parking of tank trucks, drilling rigs, or any other vehicles related to the operation of, construction of, or maintenance of said well site and/or storage tanks within the road right-of-way.
 4. No residence or public building shall be erected within two hundred (200) feet from any oil or gas well, storage tanks, and/or separator units, abandoned or not abandoned.
 5. The placement of all storage tanks (gas and oil well) and related equipment shall meet the requirements of the ORC and/or the Ohio Administrative Code.

6. Shut-off valves shall be painted a conspicuous color (such as fluorescent orange) for easy identification in an emergency.
 7. The immediate areas surrounding the drill site and storage tanks for a distance of fifteen (15) feet shall be kept mowed and cleared of combustible materials, including trees and overhanging branches.
 8. All gas and oil lines shall be buried a minimum of thirty (30) inches below the surface and all lines shall be drawn on a map and recorded with the Township Zoning Inspector and the Fire Department.
 9. No open fires shall be permitted within two hundred (200) feet of any gas well or storage tank except as otherwise provided by law or regulation.
 10. Subject to State requirements, flaring may be permitted into a pit after notifying the Fire Department and the Township Zoning Inspector.
 11. Access roads to the oil well storage tanks shall be properly constructed and maintained to allow access for fire protection year round.
 12. Storage tanks shall be kept painted, manholes locked, and discharge and fill valves shall be locked.
- B. Contamination of surface or ground water by substances resulting, obtained, or produced in connection with the exploration, drilling, production, storage, or transport of oil or gas or any of its byproducts is prohibited and the following regulations must be followed:**
1. All oil and gas production equipment at a wellhead and related storage tanks shall be diked so as to contain within the diked area all substances relating to the oil and gas well operations involved. Said dikes should be liquid tight and meet the construction standards set forth in the following, marked Exhibit "A".

In order to be approved by Spencer Township, all pit liners used in Spencer Township must consist of a minimum six thousandth of an inch thick polyethylene plastic (other than

non-linear, low density polyethylene) or another Ohio Department of Natural Resources approved bacterial resistant material. The liner must be cross-laminated and reinforced with fibers with a life expectancy equivalent to the plastic. There must be at least a 3 by 3 mesh of reinforcing fibers per square inch. The liner must be a single sheet. If factory seamed, the seams shall have equal or greater strength than the parent material. The liner must be free of damage or defect prior to installation.

2. Where the dikes provided for herein are being eroded or damaged as a result of the volume of stormwater runoff flowing against such or because of their location are likely to be so eroded or damaged, a diversionary swale or dike shall be constructed to remove such stormwater runoff away from said dike as set forth in Exhibit "A".
3. If during the construction of any temporary or permanent pit for the retention of substances resulting, obtained, or produced in connection with the exploration, drilling, or production of oil and gas, a subsurface drainage system is encountered, said subsurface drainage system shall be plugged at a point no closer than twenty (20) feet to the pit wall on both the inlet and outlet of said system. In addition, the subsurface drainage system shall be relocated at least twenty (20) feet from the edge of the pit.
4. Where the well site is on a steep slope or in a flood plain area, tanks rather than pits shall be installed and utilized for the temporary storage of salt water, brine, and oil field waste. Said tanks shall be liquid tight.

C. General

1. The Zoning Inspector may inspect oil and gas wells and storage sites at any time in order to insure compliance with all local regulations.
2. The Zoning Inspector shall be notified prior to the setting of any oil storage tank(s) to insure compliance with all local regulations.

EXHIBIT "A"

STANDARDS AND SPECIFICATIONS FOR PERIMETER DIKES

Definition:

A perimeter dike is a ridge of compacted soil located along the perimeter of a site and around any storage tanks or pits.

Purpose:

The purpose of a perimeter dike is to prevent off-site stormwater from entering the site and to prevent the escape of sediment, salt water (brine), and other oil field wastes.

Design Criteria:

The following criteria shall be used:

- A. Drainage Area (Less than five acres)

For large drainage areas see Standards and Specifications for diversion.
- B. Top Width

Two foot minimum.
- C. Height

Eighteen inches minimum height measured from the existing or graded ground at the upslope toe to the top of the dike.
- D. Side Slopes

Two-to-one or flatter.
- E. Grade

Dependent upon topography, but shall have positive drainage sufficient to drain to an adequate outlet.
- F. Stabilization

Where slope of the channel is 1.0 to 5%, stabilization may be required by the Stormwater Management Inspector according to the needs of the site.

Over 5% stabilization shall be required.



ARTICLE VII

NONCONFORMING USES

Section 701 Regulations

The lawful use of any building or land existing at the effective date of this Resolution may be continued although such use does not conform with the provisions of this Resolution, provided the following conditions are met:

Section 701.1 Alterations

A nonconforming building or structure may be altered or improved, but not enlarged or extended, provided such work does not exceed in aggregate cost fifty (50) percent of the total replacement value of the building or structure.

Section 701.2 Extensions

The extension of a lawful use to any portion of a nonconforming building or structure which existed prior to the enactment of this Resolution shall not be deemed the extension of such nonconforming use.

Section 701.3 Constuction Approved Prior to Resolution

Nothing in this Resolution shall prohibit the completion or construction and use of a nonconforming building for which a building permit has been issued prior to the effective date of this Resolution, provided that construction is commenced within ninety (90) days after the issuance of such permit; that constuction is carried on without interruption for a continuous period in excess of thirty (30) days; and that the entire building shall have been completed within one (1) year after the issuance of said building permit.

Section 701.4 Displacement

No nonconforming use shall displace a conforming use.

Section 701.5 Discontinuance or Abandonment

Whenever a nonconforming use has been voluntarily discontinued for a period of two (2) years or more, such discontinuance shall be considered conclusive evidence of an intention to legally abandon the nonconforming

use. At the end of the two (2) year period of abandonment, the nonconforming use shall not be re-established, and any further use shall be in conformity with the provisions of this Resolution.

Section 701.6 Restoration

Nothing in this Resolution shall prevent the reconstruction, repairing, rebuilding, and continued use of any nonconforming building or structure damaged by fire, collapse, explosion, or Acts of God, subsequent to the date of this resolution. Such nonconforming uses may be rebuilt or restored provided the area is not increased or extended.

ARTICLE VIII

ADMINISTRATION AND ENFORCEMENT

Section 801 Administration

The Township Zoning Commission shall meet at a minimum quarterly.

Section 801.1 Zoning Inspector

A Zoning Inspector shall be employed to enforce this Zoning Resolution. The term of employment, rate of compensation, and other such conditions shall be set by the Township Trustees.

Section 801.2 Submission of Application

All applications for zoning certificates shall be submitted to the Zoning Inspector who may issue zoning certificates when all applicable provisions of this Resolution have been met. All applications for Conditional Zoning Certificates shall be made to the Zoning Inspector and submitted to the Board of Zoning Appeals which may issue Conditional Zoning certificates in accordance with Article V of this Resolution.

Section 801.3 Zoning Certificates Required

A. Application Contents

Before constructing, changing the use of, or altering any building, or changing the use of any premises, application shall be made to the Zoning Inspector for a zoning certificate. The application shall include the following information:

1. A plot plan drawn to scale showing the exact dimensions of the lot to be built upon.
2. The location, dimensions, height, and bulk of structures to be erected.
3. The intended use.
4. The yard, open area, and parking space dimensions.
5. Written evidence that the responsible health authority has approved the proposed sanitary sewage disposal facilities

for the use for which the zoning certificate has been requested.

6. Any other pertinent data as may be necessary to determine and provide for the enforcement of this Resolution.

B. Culvert Permit

No zoning certificate shall be granted to build any structure within the confines of the unincorporated area of the Township which has ingress or egress to the highway until the owner of such property has secured a permit from the State Department of Transportation, the County Engineer, or the proper Township official (whichever authority has jurisdiction), for permission to install a culvert of the proper size and specifications required by said State Department of Transportation, County Engineer, or proper local Township official (whichever authority has jurisdiction) and complete proper installation of such culvert.

C. Issuance of Zoning Certificate

Within ten (10) days after the receipt of application, the Zoning Inspector shall issue a zoning certificate if the application complies with the requirements of this Resolution and the application is accompanied by the proper fee as indicated in Appendix D.

D. Expiration of Zoning Certificates

The zoning certificate shall become void at the expiration of twelve (12) months after date of issuance unless construction is started. If no construction is started or use changed within twelve (12) months of date of permit, a new permit and fee is required upon application.

Section 801.4 Payment of Fees

- A. The schedule of fees related to the administration of this Resolution is established by, and may be subject to change by, resolution of the Board of Trustees, as it may from time to time deem necessary without public hearing. The Fee Schedule can be obtained through The Spencer Township Zoning Inspector or the Spencer Township Clerk.
- B. When the Board of Zoning appeals finds it necessary to maintain a Strict record of public hearing procedures, or when the Board of

Zoning Appeals has deemed it necessary to require special studies to be made, the applicant shall bear all direct and related costs.

Section 801.5 Board of Zoning Appeals

There is hereby created a Board of Zoning Appeals which shall be appointed by the Spencer Township Trustees and shall have the powers and follow the procedures prescribed by the Ohio Revised Code and by this Resolution.

A. Powers and Duties

The Board of Zoning Appeals shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of Sections 519.01 to 519.99 inclusive of the Revised Code, or of this Resolution which is adopted pursuant thereto.

In exercising the above mentioned powers, the Board may, in conformity with such sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and make such order, requirement, decision, or determination as ought to be made, and to that end has all powers at the officer from whom the appeal is taken.

2. **VARIANCE APPEALS**

- a. **General**

The Board shall have the power to authorize upon appeal in specific cases, such variances from the terms of the Zoning Resolution as will comply with the provisions of 801.5(2)(b) or (c) below.

- b. **Use Variances**

The Township Board of Zoning Appeals may authorize, upon appeal, in specific cases, a use variance from the terms of the Zoning Resolution as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship,

and so that the spirit of the resolution shall be observed and substantial justice done.

c. Area Variance

The Board of Zoning Appeals may authorize, upon appeal in specific cases variances from the terms of the Zoning Resolution where it determines that practical difficulties exist.

In determining that practical difficulties exist, the Board shall consider, but is not limited to, the following factors:

1. Whether the property in question will yield a reasonable return or whether there can be any 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 whether adjoining properties would suffer a substantial detriment as a result of the variance;
4. Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
5. Whether the property owner purchased the property with the knowledge of the Zoning Restriction;
6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and
7. Whether the spirit and intent behind the Zoning Regulation will be observed and substantial justice done by granting the variance.

d. General Findings

In order to approve any variance, the Board shall make a specific finding that:

1. The literal interpretation of the provisions of the resolution deprive the applicant of rights commonly enjoyed by properties in the same district under the terms of this resolution.
2. That the granting of the variance will not be detrimental to the public interest or to the property or improvements in the district in which the variance is sought and will not materially impair the purpose of this resolution.

e. Limitation

The Board of Zoning Appeals shall not grant a use variance for any use expressly prohibited by the terms of this Resolution.

The Board of Zoning Appeals may grant a use variance for any use not expressly prohibited by the terms of this resolution in the district involved upon a finding that the conditions of Section 519.4(B) of the Ohio Revised Code and Section 801.52(B) have been met. No non-conforming use of neighboring lands, structures, or buildings in the same district and not currently permitted or non-conforming use of the land, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

f. Supplementary Conditions

In granting a variance, the Board may impose such conditions as it may deem necessary to protect the public health, safety and morals, and, in furtherance of the purpose and intent of this resolution, including a requirement of a bond guarantee that insures special conditions imposed by the Board will be complied with.

3. To grant conditional zoning certificates for the use of land, buildings, or other structures as provided for in this zoning resolution.
4. Revoke any authorized variance or conditional zoning certificates granted herein if any condition of the variance or conditional certificate is violated.

Section 801.6 Appeals/Variance/Conditional

- A. All appeals, variances, and requests for conditional zoning certificates, shall be made to the Board of Zoning Appeals in writing, and on the forms described therefore.
- B. An appeal to the Board of Zoning Appeals may be taken by any person, including the Township itself through the Board of Trustees, adversely affected by any decision of an administrative officer of the Township. Such appeal should be taken within twenty (20) days after the decision by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals a Notice of Appeal. Each appeal application shall refer to the specific provisions of the resolution involved, and shall set forth the interpretation that is claimed by the aggrieved party.
- C. In any request for a variance, the details of the variance should be specifically set forth in the variance request, and the grounds on which it is claimed that the variance should be granted shall be set forth specifically providing how the request meets the applicable requirements of 801.5(2)(b) or (c).
- D. Each decision of the Board shall be by resolution.
- E. The Board shall maintain a file for each appeal, variance or request for conditional zoning certificate presented to it by property address, under one or the other of the following headings; Appeal, Conditional Zoning Certificate or Variance, together with all documents pertaining thereto.
- F. Within ten (10) days from the date of any final decision or order of the Zoning Board of Appeals, such Board shall notify in writing the Zoning Commission of such final decision or order.

Section 801.7 Amendments

- A. Amendments to this Resolution may be initiated by:

1. Motion of the Township Zoning Commission.
2. Passage of a resolution by the Board of Township Trustees.
3. Filing of an application by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment or supplement with the Township Zoning Commission.

B. For information regarding procedures as set forth in the Ohio Revised Code, referring to Amendments, refer to Appendix A.

Section 802 Enforcement

Section 802.1 Violations

Buildings erected, altered, moved, razed, or converted, or any use of land or premises carried on in violation of any provision of this Resolution are declared to be a nuisance per se.

Section 802.2 Inspection

The Zoning Inspector shall inspect each alleged violation and shall, in writing, order correction of all conditions which are found to be in violation of this Resolution.

Section 802.3 Correction Period

All violations shall be corrected within a period set by the Zoning Inspector. Any violation not corrected within that time period shall be reported to the County Prosecutor who shall initiate action to correct said violation.

Section 802.4 Penalties

The owner or owners of any building or premises or part thereof where anything in violation of this Resolution shall be placed or shall exist, and any tenant or occupant of such building or premises, and any architect, builder, or contractor who shall assist in the commission of any such violation, and any person who shall violate any of the provisions of this Resolution or fail to comply therewith shall for each violation or noncompliance be deemed guilty of a misdemeanor and upon conviction thereof, be fined pursuant to the Ohio Revised Code. Each day such violation or failure to comply shall exist shall constitute a separate offense.

Section 802.5 Prevention of Violations

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, the Board of Township Trustees, the Prosecuting Attorney of Medina County, the Township Zoning Inspector, or any adjacent or neighboring property owners who would be especially damaged by such violation, in addition to the other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use. The Board of Township Trustees may employ special counsel to represent it in any proceeding or to prosecute any legal actions brought under this Section.

ARTICLE IX

VALIDITY AND SEPARABILITY

It is hereby declared to be the legislative intent that if any provision or provisions of this resolution, or the application thereof to any zoning lot, building, or other structure, or tract of land, are declared by a court of competent jurisdiction to be invalid or ineffective in whole or in part, or to be inapplicable to any person or situation, the effectiveness of such decision shall be limited to the provision or provisions which are expressly stated in the decision to be invalid or ineffective, or to the zoning, building, or other structure, or tract of land immediately involved in the controversy. All other provisions of this Resolution shall continue to be separate and fully effective, and the application of any such provision to other persons or situations shall not be affected.

ARTICLE X

REPEALER

All existing Resolutions of Spencer Township, Medina County, Ohio, inconsistent herewith, are hereby repealed.

ARTICLE XI

EFFECTIVE DATE

This Resolution, shall take effect and be in full force and effective from and after the earliest period allowed by law.

Recommended by the Township Zoning Commission.

Date: 11-21-00

Kayley Herte
Chairman of the Township Zoning Commission

Adopted by the Spencer Township Trustees

Date: Nov. 7, 2000

Donald Ekosterka

Scott N. J.

Carly T. [Signature]

Attested by the Clerk of the Township:

Watt Ziff
Clerk

This version includes Amendments to the Resolution adopted by The Spencer Township Trustees in 1999 and 2000.

ARTICLE XII

DEFINITIONS

ACCESSORY USE: is a use customarily incidental and subordinate to the principal use or building, located on the same lot or premises as the principal use or building.

ALTERATION: as applied to a building or structure, is a change or rearrangement in the structural parts of the existing facilities, or an enlargement, whether by extending on a side or by increasing in height, or by moving from one location to another.

AUTO GRAVEYARD: synonymous to Junk Yard.

BASEMENT: a story partially below the level of the adjoining ground and below the first tier of floor beams or joists. When a basement floor is less than three (3) feet below the average grade, it will be rated as the first story or ground floor. Basements shall be differentiated from earth-sheltered buildings. The use of a basement as temporary or permanent living quarters shall be prohibited.

The use of a basement as temporary or permanent living quarters prior to completion of the dwelling shall be prohibited.

BUILDING: any structure having a roof supported by columns or by walls, including signs, billboards, tents, and lunch wagons, dining cars, camp cars, or other structures, whether stationary or removable, used for living or business purposes.

BUILDING, EARTH-SHELTERED: a structure built underground with a floor at ground level on a part of at least one side. Earth-sheltered buildings shall meet all requirements of the Medina County Building Code and are differentiated from basement dwellings, which are prohibited, in that earth-sheltered dwellings are designed for permanent occupancy. No additional stories are planned for a later day, as with basement dwellings.

BUILDING LINE: is a line parallel to the road right-of-way defining the location of the main building or structure with respect to the road, outside which no part of the foundation of the main building or structure projects.

BUILDING, PRINCIPAL: is the building housing the principal activity performed on any lot.

COURT: an open, unoccupied space, other than a yard, on the same lot with a building or group of buildings which is bounded on two (2) or more sides by such building

or buildings and every part of which is clear and unobstructed from its lowest point to the sky.

DUMPS: any premises used primarily for disposal by abandonment, discarding, dumping, reduction, burial, incineration, or any other means and for whatever purpose of garbage, sewage, trash, refuse, waste material of any kind, junk, discarded machinery, vehicles or parts thereof, offal, or dead animals.

DWELLING AREA: the area of a dwelling unit shall be the sum of the gross floor area above the basement level, and not more than three (3) feet below finished grade, including these rooms (and closets) having a minimum ceiling height of seven (7) feet, six (6) inches and having a natural light and ventilation as required by the County Building Code; rooms above the first floor may be included which are directly connected by a permanent stairs and hall, and space under pitched roofs having a minimum knee wall height of four (4) feet, if one-half of the room area has a minimum ceiling height of seven (7) feet, six (6) inches.

DWELLING, ONE FAMILY: is a detached building designed for, or occupied exclusively by, one family and complying with County Building Regulations.

DWELLING, TWO FAMILY: is a detached building designed for, or converted, or occupied exclusively by two families, living independently of each other.

FAMILY: is one (1) or more persons occupying a premises and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house, club, fraternity, or hotel.

FARM MARKET: is a facility meeting the provisions of Section 519.21(C) of the Ohio Revised Code (see Appendix C).

FRONTAGE: the side of a lot abutting on a street or street right-of-way; the front lot line.

GARAGE, PUBLIC: any garage, other than a private garage, available to the public for storage, where repairs, rental, servicing, adjusting, or equipping of motor vehicles is permitted or at which the sale of accessories and/or filling station service is permitted.

GASOLINE SERVICE STATION: is any area of land, including any structure or structures thereon, that is or are used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of vehicles. For the purpose of this Resolution, there shall also be deemed to be included within this term any area or structure used or designed to be used for polishing, greasing, washing, spraying, dry cleaning, or otherwise cleaning or serving such motor vehicles.

HEIGHT, BUILDING: is the vertical dimension measured from the average elevation of the finished lot grade at the front of the building; to the highest point of ceiling of the top story in the case of a flat roof; to the deck line of a mansard roof; and to the average heights between the plate and ridge of a gable, hip, or gambrel roof.

HOME OCCUPATION TYPE 1: is an accessory use which is an activity, profession, occupation, service, craft, or revenue-enhancing hobby which is clearly incidental and subordinate to the use of residential property for normal dwelling purposes, is conducted entirely within the dwelling unit, without any significant adverse effects on the surrounding neighborhood. Activities such as teaching, tutoring, tax consulting, and the like, shall involve no more than three (3) receivers to such activity at any one time on the premises.

HOME OCCUPATION TYPE 2: Type 2 home occupation is a non-residential use utilizing an accessory building on a residential property and is carried on by the property's resident, which is clearly incidental and secondary to the use of the property for residential purposes. It can also involve the use of commercial vehicles or equipment operated away from the residential premises for business purposes, but parked, stored, or serviced on the residential premises without creating a nuisance and is clearly incidental and secondary to the use of the residence for residential purposes.

HOUSEHOLD DISCARDS: anything discarded from a household.

JUNK YARD: any land or building used for abandonment, storage, keeping, collecting, or baling of paper, rags, scrap metals, other scrap or discarded materials, or for abandonment, demolition, dismantling, storage, or salvaging of automobiles or other vehicles not in running condition, machinery or parts thereof. Two (2) or more automobiles or trucks which are unlicensed or disabled (not in operating condition) shall be deemed a Junk Yard, if not placed within fourteen (14) days in an enclosed permanent structure with permanently attached roof and sides.

LOADING SPACE: is an off-street space or berth on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon a street, alley, or other appropriate means of access.

LOT: is a piece, parcel, or plot of land occupied or capable of being occupied by one or more buildings or uses customarily incident to it, including such open spaces as required by this Resolution and access to frontage on a public or private street built to public standards.

LOT, CORNER: is a lot at the junction of and abutting on two (2) or more intersecting streets.

LOT, DEPTH OF: is the mean horizontal distance from the centerline of the street and the rear lot line.

LOT, INTERIOR: is a lot other than a corner lot.

LOT LINES: are the lines defining the limits of a lot.

LOT OF RECORD: is a lot which is a part of a subdivision, the map of which has been recorded in the Office of the Medina County Recorder, or a lot described by metes and bounds, the deed to which has been recorded in the Office of the Medina County Recorder.

LOT WIDTH: is the width measured along the building line.

LOT WIDTH, MINIMUM: the required minimum horizontal distance between side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line.

MAJOR THOROUGHFARE: is a road defined as a major thoroughfare by the Regional Planning Commission or indicated as a major thoroughfare on the Land Use and Thoroughfare Map of current adoption.

MINIMUM BUILDING SETBACK LINE: is a line parallel to the street centerline at such distance from the street centerline as required by the minimum front yard depth in the district in which it is located.

MINIMUM LIVING FLOOR AREA: floor area for dwellings shall consist of areas such as living room, bedroom, bathroom, dining room, rooms for cooking, den, library and family rooms, utility room, and recreation rooms but shall not include areas such as porches, breezeways, terraces, garages, and basements.

NON-CONFORMING USE: is a building, structure or use of land legally existing at the time of the enactment of the Resolution, and which does not conform to the use regulations of the district in which it is located.

NURSING OR CONVALESCENT HOME: is any dwelling with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

OPEN SPACE: is an area of land which is in its natural state, or is developed only for the raising of agricultural crops, or for public outdoor recreation.

PARKING SPACE: an off-street space or berth for the temporary parking of a vehicle for a period longer than required to load or unload persons or goods and having an area not less than two hundred (200) square feet, a width of not less than ten (10) feet, and drives or aisle giving access from streets.

PAVED STREET: conforms to the Medina County Subdivision Regulations.

PUBLIC/PRIVATE PONDS OR LAKES: public or private ponds or lakes shall be considered a structure for the purpose of permits where such contained over one and one-half (1 ½) feet of water depth, and shall conform to all required yard setback lines.

Ponds or lakes shall meet standards and specifications of the Medina County Soil and Water Conservation District, and/or Chapter 1521 of the Ohio Revised Code.

QUARRY: any use of the land for the removal of any mineral or material, including open or strip mining and shaft mining.

SCRAP YARD: synonymous to Junk Yard.

STORY, HEIGHT OF: the vertical distance from the top surface of one floor to the bottom surface of the next above. The height of the topmost story is the distance from the top surface of the floor to the top surface of the ceiling joists.

STREET, PRIVATE: a thoroughfare which affords direct means of access to more than one abutting property, but which has not been dedicated to the public, or subject to public easements therefore.

STREET, PUBLIC: is a public thoroughfare which has been dedicated or deeded to the public for public use and which affords principal access to abutting property.

STRUCTURAL, ALTERATIONS: is any change in the supporting members of a building such as bearing walls, columns, beams or girders, or any substantial changes in the roof and exterior walls.

STRUCTURE: is anything constructed or erected which requires location on the ground, including billboards, swimming pools, but not including fences or walls used as fences, driveway basketball nets, swingsets, and similar items.

Public or private ponds or lakes containing over one and one-half (1 ½) feet of water depth shall be considered as structures for the purpose of permits, and shall conform to all required yard setback lines.

Ponds or lakes shall meet standards and specifications of the Medina County Soil and Water Conservation District, and/or Chapter 1521 of the Ohio Revised Code.

TANK/STORAGE: is in reference to petroleum products, a closed vessel for the storage of liquid hydrocarbon substances at atmospheric pressure.

USE: the principal purpose for which a lot and/or the main building thereon is designed, arranged, or intended and for which it may be used, occupied or maintained.

WIDTH, SIDE YARD: is the perpendicular distance between the established side lot line and any portion of any structure existing or to be constructed on said lot.

YARD DEPTH, FRONT: is the perpendicular distance between the street centerline and the nearest portion of any structure existing or to be constructed.

YARD DEPTH, REAR: is the space between any portion of the building and the rear line and extending the full width of the lot.

ZONE: area within which only certain uses of land and buildings are permitted; yards and other open spaces are required; lot areas, building height limits, and other requirements are established; all of the foregoing being uniform throughout the zone in which they apply.-

2-5-2013

Spencer Township Zoning Commission
P.O. Box 229
Spencer, OH 44275

January 7, 2013

Dear Spencer Township Trustees:

The Spencer Township Zoning Commission met December 21, 2012 at 7:00 pm, in a Public Hearing to review the amendment to the definition to the Home Occupation Type 2. After reviewing the recommendations from the Medina County Prosecutor and the Medina County Planning Commission, The Spencer Township Zoning Commission is recommending the following amendment to the definition for the Home Occupation Type 2:

Type 2 home occupation is a non-residential use utilizing an accessory building on a residential property and is carried on by the property's resident, which use is clearly incidental and secondary to the use of the property for residential purposes. It can also involve the use of commercial vehicles or equipment operated away from the residential premises for business purposes, but parked, stored, or serviced on the residential premises without creating a nuisance and is clearly incidental and secondary to the use of the residence for residential purposes.

The Commission is not adding (M) for Section 301.2 (Uses for Type 2) at this time because of the questions from the Medina County Prosecutor and Medina County Planning Commission. The Commission requests to take another look at this Section at a later date.

Please let the Spencer Township Zoning Commission know if you have any questions about this matter.

Respectfully submitted,



Carol Gentile, secretary

APPENDIX A
PROCEDURES REGARDING AMENDMENTS TO THE
RESOLUTION

See following copies of the Ohio Revised Code.

Fee for filing zoning resolutions and amendments, RC § 317.32.

Recommendations of township zoning commission; organization, powers and compensation of commission, RC § 519.05.

Township zoning commission, RC § 519.04.

Research Aids

Referendum:

O-Jur3d: Bldg, Zon § 241; Elect § 112

Am-Jur2d: Zoning §§ 47, 55

C.J.S.: Zon&LP § 12 et seq

West Key No. Reference

Zoning 136

Law Review

Constitutional law; municipal zoning, Case note. 10 AkronLRev 557 (1977).

Litigating the zoning case in Ohio: suggestions to fill the textbook void. Edward Kancler. 24 ClevStLRev 33 (1975).

CASE NOTES AND OAG

1. (1976) "As a basic instrument of democratic government, the referendum process does not, in itself, violate the due process clause of the Fourteenth Amendment when applied to a zoning ordinance. Since the rezoning decision in this case was properly reserved to the people of Eastlake under the Ohio constitution, the Ohio Supreme Court erred in holding invalid, on federal constitutional grounds, the charter amendment permitting the voters to decide whether the zoned use of respondent's property could be altered": *Forest City Enterprises v. City of Eastlake*, 48 OS2d 47, 2 OO3d 136, 356 NE2d 499; following 426 US 668, 49 LE2d 132, 96 SCt 2358; overruling 41 OS2d 187, 70 OO2d 384, 324 NE2d 740 (1975).

2. (1949) Where, pursuant to RC § 519.11, a zoning plan is submitted to the electors residing in an unincorporated area of a township, the form of the ballot is controlled by GC § 4785-103 (RC § 3505.06) and the provision thereof, that "immediately below such title shall be printed the text describing the question or issue," does not require the printing on the ballot of the whole text of zoning plan or an impracticable digest thereof, but does require the printing of language constituting a topic or theme describing the question or issue submitted: *Prosen v. Duffy*, 152 OS 139, 39 OO 444, 87 NE2d 342.

3. (1957) The board of township trustees does not have the authority to regulate and enforce zoning, granted in RC Chapter 519., until such time as a favorable vote of the electors is certified by the board of elections: *Henn v. Universal Atlas Cement Co.*, 76 OLA 439, 144 NE2d 917 (CP).

4. (1948) Where, by the provisions of RC § 519.11 relating to the adoption of township zoning regulations, it is specified that a majority of the votes cast upon the issue must favor such adoption, the statute does not contemplate a majority of all votes cast at the election but is limited to those cast upon the issue: *Burnett v. Wooster*, 54 OLA 225, 84 NE2d 261 (CP).

5. (1964) A comprehensive zoning plan adopted pursuant to RC Chapter 519., may not be repealed for a part only of the territory included within the zoning plan but must be repealed vel non as a whole. The electors residing within the unincorporated area of the township included within the zoning plan shall vote upon the repeal of that zoning plan. A referendum seeking repeal of a township

zoning plan may be held in the same year the plan was approved by the electorate: 1964 OAG No.1500.

6. (1952) A township zoning ordinance which has been adopted under RC § 519.11, with the approval of the electors residing in the unincorporated area of such township, is not affected by the action of the county commissioners, under GC § 3249 (RC § 503.07), in erecting a new township out of that portion of such township within the limits of a municipal corporation: 1952 OAG No.1459.

§ 519.12 Amendments to zoning resolution; procedure; referendum.

(A) Amendments to the zoning resolution may be initiated by motion of the township zoning commission, by the passage of a resolution therefor by the board of township trustees, or by the filing of an application therefor by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the township zoning commission. The board of township trustees may require that the owner or lessee of property filing an application to amend the zoning resolution pay a fee therefor to defray the cost of advertising, mailing, filing with the county recorder, and other expenses. If the township trustees require such a fee, it shall be required generally, for each application. 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 nor more than forty 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. Notice of such hearing shall be given by the township zoning commission by one publication in one or more newspapers of general circulation in the township at least ten days before the date of such hearing.

(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, written notice of the hearing shall be mailed by the zoning commission, by first class mail, at least ten days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from such area proposed to be zoned or redistricted to the addresses of such owners appearing on the county auditor's current tax list. The failure of delivery of such notice shall not invalidate any such amendment.

(C) 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:

(1) The name of the zoning commission that will be conducting the public hearing;

(2) A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;

(3) 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;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

(5) 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 days prior to the public hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;

(7) Any other information requested by the zoning commission;

(8) A statement that after the conclusion of such hearing the matter will be submitted to the board of township trustees for its action.

(D) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten 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:

(1) The name of the zoning commission that will be conducting the public hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) 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 days prior to the public hearing;

(4) The name of the person responsible for giving notice of the public hearing by publication;

(5) A statement that after the conclusion of such hearing the matter will be submitted to the board of township trustees for its action;

(6) Any other information requested by the zoning commission.

(E) Within five days after the adoption of such motion or the certification of such resolution or the filing of such application the township zoning commission shall transmit a copy thereof together with text and map pertaining thereto to the county or regional planning commission, if there is such a commission.

The county or regional planning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification thereof and shall submit such recommendation to the township zoning commission. Such recommendation shall be considered at the public hearing held by the township zoning commission on such proposed amendment.

The township zoning commission shall, within thirty days after such hearing, recommend the approval or denial of the proposed amendment, or the approval of some modification thereof and submit such recommendation together with such application or resolution, the text and map pertaining thereto and the recommendation of the county or regional planning commission thereon to the board of township trustees.

The board of township trustees shall, upon receipt of such recommendation, set a time for a public hearing on such proposed amendment, which date shall not be more than thirty days from the date of the receipt of such recommendation from the township zoning commission. Notice of such public hearing shall be given by the board by one publication in one or more newspapers of general circulation in the township, at least ten days before the date of such hearing.

(F) 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 notice shall set forth the time, date, and place of the public hearing and shall include all of the following:

(1) The name of the board that will be conducting the public hearing;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) 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;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

(5) 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 days prior to the public hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;

(7) Any other information requested by the board.

(G) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten 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:

(1) The name of the board that will be conducting the public hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) 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 days prior to the public hearing;

(4) The name of the person responsible for giving notice of the public hearing by publication;

(5) Any other information requested by the board.

(H) Within twenty days after such public hearing the board shall either adopt or deny the recommendations of the zoning commission or adopt some modification thereof. In the event the board denies or modifies the recommendation of the township zoning commission the unanimous vote of the board shall be required.

Such amendment adopted by the board shall become effective in thirty days after the date of such adoption unless within thirty days after the adoption of the amendment there is presented to the board of township trustees a petition, signed by a number of registered electors residing in the unincorporated area of the township or part thereof included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the board of township trustees to submit the amendment to the electors of such area for approval or rejection at a special election to be held on the day of the next primary or general election. Each part of this petition shall contain the number and the full and correct title, if any, of the zoning amendment resolution, motion, or application, furnishing the name by which the amendment is known and a brief summary of its contents. In addition to meeting the requirements of this section, each petition shall be governed by the rules specified in section 3501.38 of the Revised Code.

The form of a petition calling for a zoning referendum and the statement of the circulator shall be substantially as follows:

"PETITION FOR ZONING REFERENDUM

(if the proposal is identified by a particular name or number, or both, these should be inserted here)

A proposal to amend the zoning map of the unincorporated area of Township, County, Ohio, adopted (date) (followed by brief summary of the proposal).

To the Board of Township Trustees of Township, County, Ohio: County, Ohio:

We, the undersigned, being electors residing in the unincorporated area of Township, included within the Township Zoning Plan, equal to not less than eight per cent of the total vote cast for all candidates for governor in the area at the preceding general election at which a governor was elected, request the board of township trustees to submit this amendment of the zoning resolution to the electors of Township residing within the unincorporated 50a of the

township included in the Township Zoning Resolution, for approval or rejection at a special election to be held on the day of the next primary or general election to be held on (date), pursuant to section 519.12 of the Revised Code.

Signature Street Township Precinct County Date of Address Signing or R.F.D.

STATEMENT OF CIRCULATOR

..... (name of circulator) declares under penalty of election falsification that he is an elector of the state of Ohio and resides at the address appearing below his signature hereto; that he is the circulator of the foregoing part petition containing (number) signatures; that he witnessed the affixing of every signature; that all signers were to the best of his knowledge and belief qualified to sign; and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be.

(Signature of circulator)

(Address)

(City, village or township, and zip code)

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH."

The petition shall be filed, accompanied by an appropriate map of the area affected by the zoning proposal, with the board of township trustees, which shall then transmit the petition within two weeks of its receipt to the board of elections, which shall determine the sufficiency and validity of the petition. The petition shall be certified to the board of elections not less than seventy-five days prior to the election at which the question is to be voted upon.

No amendment 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.

Within five working days after an amendment's effective date, the board of township trustees shall file the text and maps of the amendment in the office of the county recorder and with the regional or county planning commission, if one exists.

The board shall file all amendments, including text and maps, that are in effect on January 1, 1992, in the office of the county recorder within thirty working days after that date. The board shall also file duplicates of the same documents with the re-

gional or county planning commission, if one exists, within the same period.

The failure to file any amendment, or any text and maps, or duplicates of any of these documents, with the office of the county recorder or the county or regional planning commission as required by this section does not invalidate the amendment and is not grounds for an appeal of any decision of the board of zoning appeals.

HISTORY: GC § 3180-36; 122 v 597(608), § 36; Bureau of Code Revision, 10-1-53; 126 v P.H. 20 or 127 v 1262; 127 v 363; 128 v 128 (Eff 8-18-59); 132 v S 234 (Eff 5-7-68); 139 v H 101 (Eff 9-25-81); 140 v H 14 (Eff 10-4-84); 142 v S 112 (Eff 5-31-88); 144 v S 20. Eff 1-1-92.

The effective date is set by section 3 of SB 20.

Cross-References to Related Sections

Penalty, RC § 519.99.

Action to prevent violations of zoning regulations: special counsel, RC § 519.24.

Additional township motor vehicle license tax, RC § 4504.18.

County and township zoning resolutions: amendments, RC § 317.08.1.

Effect of section on legality of regulations, RC § 519.02.2.

Fee for filing zoning resolutions and amendments, RC § 317.32.

Recommendations of township zoning commission: organization, powers and compensation of commission, RC § 519.05.

Township may adopt planned-unit development regulations, RC § 519.02.1.

Township zoning commission, RC § 519.04.

Township zoning plan repeal; procedure: referendum, RC § 519.25.

Research Aids

Referendum on amendments:

O-Jur3d: Bldg. Zon §§ 242, 243; Init & Ref §§ 7, 17, 38

Am-Jur2d: Zoning § 57

C.J.S.: Zon&LP § 84 et seq

West Key No. Reference

Zoning 191-199

ALR

Adoption of zoning ordinance or amendment thereto as subject of referendum, 72 ALR3d 1030.

Adoption of zoning ordinance or amendment thereto through initiative process, 72 ALR3d 991.

Construction and application of statute or ordinance requiring notice as prerequisite to granting variance or exception to zoning requirement, 33 ALR3d 167.

Validity, construction, and effect of agreement to rezone, or amendment to zoning ordinance, creating special restrictions or conditions not applicable to other property similarly zoned, 70 ALR3d 125.

Zoning provisions protecting landowners who applied for or received building permit prior to change in zoning, 49 ALR3d 1150.

Law Review

Litigating the zoning case in Ohio: suggestions to fill the textbook void, Edward Kancler, 24 ClevStLRev 33 (1975).

Township zoning referenda: sufficiency of contents of petition, Comment, 33 OS LJ 144 (1972).

CASE NOTES AND OAG

INDEX

Amendment, 28
 Appeal from action of board, 10
 Board not required to take testimony, 20
 Conflict with RC § 5511.01, 31
 Constitutional questions, 6-8
 Declaratory judgment, 12
 Due process clause of the fourteenth amendment, 5
 Effect of section, 9
 Election falsification statement, 2
 Fees for zoning applications, 32
 Hearing notice, 17
 Names of electors, numbers of, 36
 Note, who entitled to, 37
 Notices, content of, 29
 Petitions re zoning amendments, 30
 Procedural requirements not imposed by notices, 18, 33
 "Public hearing" construed, 19
 Referendum petition, 34
 Affidavit of circulator, 21
 Application, 25
 Insufficient information, 24
 Modification of ballot by court, 23
 Original provisions not required on amendment petition, 22
 Requirements, generally, 11, 13
 Review and certification by board of elections, 3, 15
 Review under RC Chapter 2506., 6, 10
 Special session of board of township trustees, 16
 Summary, 1
 Time requirement, 27
 Unanimity requirement, 10.1, 26
 Zoning presentation, 4
 Zoning regulations and permits, 14, 35

1. (1984) The summary of the zoning referendum was ambiguous and misleading because it failed to apprise the reader of the present zoning statutes of the land and of the precise nature of the requested change: *Shelly & Sands, Inc. v. Franklin Cty. Bd. of Elections*, 12 OS3d 140, 12 OBR 180, 465 NE2d 883.

2. (1982) A petition seeking a zoning referendum is insufficient if it fails to contain the prescribed election falsification statement: *State ex rel. Griffin v. Krumholtz*, 70 OS2d 125, 24 OO3d 234, 435 NE2d 1110.

3. (1977) The 60-day requirement for certification of issues to the board of elections, as provided in RC § 3501.02(F), is applicable to the referendum procedure for township zoning amendments provided in RC § 519.12: *State ex rel. English v. Geauga Cty. Bd. of Elections*, 52 OS2d 49, 6 OO3d 190, 369 NE2d 11.

4. (1976) A zoning referendum petition must fairly and accurately present the issues to be submitted to the electorate in order to assure a free, intelligent and informed vote by the average citizen affected: *State ex rel. Schultz v. Cuyahoga Cty. Bd. of Elections*, 48 OS2d 173, 2 OO3d 372, 357 NE2d 1079; [affirming, 50 OApp2d 1, 4 OO3d 1, 361 NE2d 477].

5. (1976) "As a basic instrument of democratic government, the referendum process does not, in itself, violate the due process clause of the Fourteenth Amendment when applied to a zoning ordinance. Since the rezoning decision in this case was properly reserved to the people of Eastlake under the Ohio constitution, the Ohio Supreme Court erred in holding invalid, on federal constitutional grounds, the charter amendment permitting the voters to decide

whether the zoned use of respondent's property could be altered." *Forest City Enterprises v. City of Eastlake*, 48 OS2d 47, 2 OO3d 136, 356 NE2d 499; following 426 US 668, 49 LE2d 132, 96 Sct 2358; overruling 41 OS2d 187, 70 OO2d 384, 324 NE2d 740.

6. (1975) The availability of a RC Chapter 2506. action to review the denial of a variance sought by the owner of a specific tract of land does not preclude a declaratory judgment action which challenges the constitutionality of the zoning restrictions on that land: *Driscoll v. Austintown Associates*, 42 OS2d 263, 71 OO2d 247, 328 NE2d 395.

7. (1970) The requirements of Const. Art. II, § 1g do not apply to a referendum zoning petition filed under RC § 519.12: *Markus v. Board of Elections*, 22 OS2d 197, 51 OO2d 277, 259 NE2d 501.

8. (1968) Provision for a referendum on township zoning may be made by the general assembly, and RC § 519.12, insofar as it grants a power of referendum to that portion of a township electorate to be most affected by a zoning amendment passed by the board of township trustees, is constitutional: *Cook-Johnson Realty Co. v. Bertolini*, 15 OS2d 195, 44 OO2d 160, 239 NE2d 80.

9. (1967) The effect of the provisions of RC § 519.12 is that the failure of the board of township trustees to vote unanimously to deny a recommendation of the township zoning commission results in an adoption of such recommendation: *Mac Realty, Inc. v. Commercial Indus. Enterprises, Inc.*, 10 OS2d 227, 39 OO2d 365, 227 NE2d 210.

10. (1966) The action of a board of township trustees in adopting or amending a zoning regulation is a legislative action and does not fall under the provisions of RC § 2506.01, providing for appeals to the court of common pleas from final orders of administrative bodies: *Tuber v. Perkins*, 6 OS2d 155, 35 OO2d 255, 216 NE2d 877.

10.1 (1986) The vote of two members of the board of county commissioners denying plaintiffs' application to amend the zoning classification of certain real estate in an unincorporated area of a township from "residence" to "planned multiple residence," "planned office," and "retail business," constituted a "unanimous vote of the board," as required by RC § 303.12(H), which was necessary to deny the Rural Zoning Commission's recommendation to approve the amendment, where all three members of the board were present at the meeting, but one member abstained from voting while the other two members voted to deny the amendment: *State ex rel. Dry Ridge Development Co. v. Hamilton Cty. Bd. of Commrs.*, 30 OApp3d 217, 30 OBR 374, 507 NE2d 438.

11. (1983) A referendum petition filed under RC § 303.12 about a zoning change does not substantially deviate from the requirements of the statute (including the form therein set forth), and is not fatally defective by reason of the following: (1) it does not use the verb "request" but expresses a clear intent that the issue be submitted to the electorate for approval or rejection; (2) it fails to specify the date of the special election requested on the issue; (3) it fails to include a brief summary of the contents of the resolution but does include the resolution in full and this is a fair, accurate, and understandable statement of its purpose; and (4) it fails to include a representation that the numbers of signers is equal to not less than eight percent of the vote at the last gubernatorial election: *Nunneker v. Murdock*, 9 OApp3d 73, 9 OBR 94, 458 NE2d 431.

12. (1982) Revised Code § 519.12 does not impose a duty on a complainant seeking declaratory relief in the court of common pleas from the action of a township board of trustees modifying or amending a zoning ordinance to first seek a referendum prior to filing his complaint: *How-*

land Realty Co. v. Wolcott, 8 OApp3d 424, 8 OBR 548, 457 NE2d 883.

13. (1976) The requirements for referendum petitions under RC § 519.12 are: (a) The petition must contain the number and a full and correct title of the zoning resolution; (b) The petition must contain the affidavit of the person soliciting signatures for the petition certifying that to the best of his or her knowledge and belief each of the signatures is that of the person whose name it purports to be, that he believes such persons are electors of the township, and that such persons signed the petition with knowledge of its contents; and (c) If the petition contains any additional information it must be of such a character as to promote the attempt to fairly and accurately present the question or issue and must not in any way detract from a free, intelligent and informed choice by the average citizen who is requested to make a decision as to whether he should or should not sign such a petition. Where failure to comply with any one of the requirements mandated by RC § 519.12 is demonstrated on the face of the referendum petition, the relator fails to meet his burden of establishing a clear right to the relief sought and consequently, a writ of mandamus will not lie: *State ex rel. Schultz v. Cuyahoga Cty. Bd. of Elections*, 50 OApp2d 1, 4 OO3d 1, 361 NE2d 477; [affirmed, 48 OS2d 173, 2 OO3d 372, 357 NE2d 1079].

14. (1975) Statutes requiring a record of action by township trustees are mandatory where such action is legislative in nature. Where there is no record of the adoption of an amended zoning regulation by the township trustees, it is conclusively presumed that the trustees took no action and that such amended zoning regulation did not become law: *Board of Twp. Trustees v. Spring Creek Gravel Co.*, 45 OApp2d 288, 74 OO2d 409, 344 NE2d 156.

15. (1974) A board of elections has the duty, pursuant to RC § 3501.11(K), to review, examine and certify the sufficiency and validity of referendum petitions filed pursuant to RC § 519.12: *State ex rel. Diversified Realty v. Board of Trustees*, 42 OApp2d 56, 71 OO2d 271, 327 NE2d 789.

16. (1973) A "special session" of a board of township trustees held at the private residence of a township official does not qualify as a "public meeting" within the meaning of RC § 519.12 and RC § 121.22: *Crist v. True*, 39 OApp2d 11, 68 OO2d 149, 314 NE2d 188.

17. (1970) The requirement of RC § 519.12 that notice of a public hearing by a board of township trustees on a proposed zoning amendment "shall be given by the board by one publication . . . at least fifteen days before the date of such hearing," is mandatory and a resolution purporting to adopt a proposed zoning amendment when such requirement has not been fulfilled is unauthorized and ineffective: *Brown v. Sperry*, 23 OApp2d 163, 52 OO2d 205, 261 NE2d 351.

18. (1963) The requirement of RC § 519.12 that the notice of hearing to be sent by the zoning commission to property owners shall contain a statement that "after conclusion of such hearing the matter will be referred for further determination to the county or regional planning commission and to the board of township trustees as the case may be," does not refer to procedure as such and therefore does not impose an additional procedural requirement, and the inclusion in the notice of hearing of such false information as to procedure is not mandatory: *In re Yeany*, 30 OO2d 515, 94 OLA 251, 200 NE2d 813 (App).

19. (1958) The term, "public hearing," as used in RC § 519.12, connotes affording interested persons the opportu-

nity to appear and express their views pro and con regarding proposed zoning legislation: *Schlagheck v. Winterfeld*, 108 OApp 299, 9 OO2d 277, 161 NE2d 498.

20. (1958) In adopting or amending a township zoning ordinance, the board of township trustees exercises a legislative function and under the provisions of RC § 519.12 (effective July 6, 1956), such board is not required to take testimony at its public hearing held pursuant to the provisions of such section: *Schlagheck v. Winterfeld*, 108 OApp 299, 9 OO2d 277, 161 NE2d 498.

21. (1970) The original petitions for a referendum on a township zoning act do not require the appointment of a committee to serve on behalf of the signers of the petitions. Under the provisions of RC § 3501.38(E) which states that every petition paper shall bear the affidavit of the circulator and where each referendum petition contains such an affidavit and was attached to another sheet of paper by staples, that is in compliance with the provisions of RC § 3501.38, and is a valid referendum petition: *Sidwell v. Clepper*, 25 OMisc 104, 54 OO2d 99, 266 NE2d 275 (CP).

22. (1970) Where a referendum petition seeks to amend an existing provision of a zoning resolution, it is not necessary to incorporate the whole of the original provision of the zoning resolution, that being a matter of public record, and where reference is made to the original provision and the terms of the amendment are included in the referendum petition, that is sufficient to advise the petitioners as to what they are actually signing: *Sidwell v. Clepper*, 25 OMisc 104, 54 OO2d 99, 266 NE2d 275 (CP).

23. (1970) Where a ballot is prepared by the board of elections in conformity with the referendum petition, that is the responsibility of the election board and will not be modified by the court provided it substantially advises the voters as to what they are voting on: *Sidwell v. Clepper*, 25 OMisc 104, 54 OO2d 99, 266 NE2d 275 (CP).

24. (1968) A board of elections will be permanently enjoined from placing on the ballot a referendum to a township zoning amendment where the petitions contained neither a copy nor summary of the proposed change, the circulator of the petitions did not state in his affidavit that each signer had knowledge of the proposed amendment, and the ballot contained no statement that only a portion of the landowners' property was to be rezoned or that a buffer strip would be constructed between the adjacent zones: *Markus v. Trumbull County Board of Elections*, 19 OMisc 67, 48 OO2d 246, 250 NE2d 106 (CP).

25. (1983) When a proposed amendment to a township zoning resolution has been denied by the board of township trustees, the provisions of RC § 519.12(H) for a referendum election do not apply: OAG No.88-005.

26. (1985) Where a three member board of township trustees considers an application for a zoning change pursuant to RC § 519.12 and one of the members withdraws from consideration of the matter due to a conflict of interest, the unanimity requirement of RC § 519.12 is satisfied if the two remaining trustees concur in their vote either to deny or to modify the recommendation of the township zoning commission: OAG No.85-010.

27. (1985) Pursuant to RC § 519.12, a board of township trustees shall adopt, deny, or modify the recommendation of the township zoning commission with regard to a proposed amendment or supplement to a township zoning resolution within twenty days after a public hearing on the proposed amendment or supplement. If the board fails to take action within the twenty day statutory period, it may be compelled to act by a writ of mandamus; however, failure of the board of township trustees to act within

twenty days does not constitute approval of the zoning commission's recommendation: OAG No.85-010.

28. (1981) Pursuant to RC § 519.12, township trustees may amend their zoning resolution to prevent the mining for shale (surface mining) in the unincorporated area of the township if they find that such use of land would create a real or substantial risk to the public health, safety, morals, or general welfare of the township's citizens: OAG No.81-065.

29. (1972) After township zoning regulations have been enacted, any attempt to amend or supplement them should comply with the requirements of RC § 519.12. Publication of notice at least fifteen days before a hearing by the zoning commission is required under RC § 519.12. Such notice should set forth the time and place of the hearing, and in your particular situation, should state that the township is being redistricted into fourteen districts and that a comprehensive revision of the regulations is being contemplated. The notice should also contain a statement that, after the hearing, the matter will be referred to the regional planning commission, if one exists, or to the board of township trustees, as the case may be. A mere listing of the proposed amendments would not satisfy the requirement of RC § 519.12, that a summary of the amendments be included in the notice of hearing before the board of township trustees, since a "summary" is required by the statute, and the listing of all sections of the proposed resolution would not constitute a summary of the same, "reduced to a narrow compass," and a "short, concise, succinct summing up" of the proposed zoning resolutions. The inclusion of the entire resolution with all amendments, in the notice of hearing before the township trustees, would not satisfy the requirement of RC § 519.12, that there be a summary of the amendments. A brief disclosure, however, of the contents of each of the 162 major sections, if that will apprise the various owners of all further limitations on the use of their land, will satisfy the statutory requirements. Publication of the revised map of the zoning districts before the hearing by the board of trustees is not required under RC § 519.12. On the other hand, the use of such a map may well facilitate the preparation of a readily understandable summary of the proposed amendments: OAG No.72-118.

30. (1971) A board of township trustees has a duty to determine whether petitions requesting a referendum on the zoning amendment filed with the board are valid on their face for presentation to the board of elections, but does not have power to inquire into other matters respecting said petitions: OAG No.71-052.

31. (1968) In the event of a conflict between RC §§ 519.12 and 5511.01, any action by the board of township trustees to approve a request for a change in zoning may only be taken after the provisions of RC § 5511.01 have been complied with: OAG No.68-096.

32. (1963) A board of township trustees may, by resolution adopted under authority of RC Chapter 519., require that reasonable fees accompany applications made to the zoning inspector or other administrative official for zoning variances or special exceptions, to cover the costs of processing such applications: 1963 OAG No.218.

33. (1963) The statements in the third paragraph of RC § 519.12 relating to the contents of the written notice do not refer as such to the procedure to be followed under RC § 519.12 but merely provide that the notices, in addition to other requirements, state the procedure applicable to the county or regional planning commission and township trustees as the case may be pursuant to the fourth, fifth and sixth paragraphs of RC § 519.12: 1963 OAG No.77.

38. (1957) Revised Code § 519.12 which provides for a

referendum on amendments to township zoning regulations does not permit the referendum petition to be directed to only one or more of the several sections of the amendment, but requires that it be directed to the entire amendment: 1957 OAG No.255.

35. (1956) A board of township trustees, in adopting zoning regulations under RC § 519.02 et seq. and being authorized by RC §§ 519.16 and 519.17, to provide for inspection of buildings proposed to be erected or altered in the zoned area and to require permits for such erection or alteration, has implied power to provide in such regulations for the payment of reasonable fees for issuing such permits and for such inspection. The township trustees are without authority to impose such fees except by provision in such zoning regulations or by amendment thereto adopted under RC § 519.12: 1956 OAG No.7111.

36. (1956) A petition filed under RC § 519.12, demanding an election on a proposed amendment to a township zoning resolution must contain the names of electors residing in the area then included in the existing zoning plan, equal to not less than eight percent of the total vote cast for all candidates for governor by electors residing in such area at the last preceding general election at which a governor was elected: 1956 OAG No.6685.

37. (1956) At an election held under RC § 519.12, all the electors residing in the unincorporated area of the township which was included in the original zoning regulation are entitled to vote on the issue presented: 1956 OAG No.6685.

[§ 519.12.1] § 519.121 Ratification of amendments to township zoning plan.

All amendments or supplements to a township zoning plan adopted by a board of township trustees prior to the effective date of this act, except those amendments or supplements which a court of competent jurisdiction has declared unlawful or unreasonable or which are the subject of an action now pending in such a court, are hereby ratified and shall be valid amendments or supplements to such zoning plan regardless of the procedure followed with respect to such amendments or supplements prior to their adoption by a board of township trustees, except that no right of appeal on the issue of the unlawful or unreasonable character of an amendment or supplement shall be lost by the provisions of this section.

HISTORY: 126 v P.H. 20 or 127 v 1262. Eff 7-6-56.

Cross-References to Related Sections

Penalty, RC § 519.99.

Action to prevent violations of zoning regulations: special counsel, RC § 519.24.

Recommendations of township zoning commission; organization, powers and compensation of commission, RC § 519.05.

Township zoning commission, RC § 519.04.

Research Aids

Procedure:

Am-Jur2d: Zoning §§ 47, 55

C.J.S.: Zon&LP § 84 et seq

West Key No. Reference

Zoning 191-199

[§ 519.12.2] § 519.122 Limitation on procedural challenges.

No action challenging the validity of a zoning resolution or of any amendment to such a resolution because of a procedural error in the adoption of the resolution or amendment shall be brought more than two years after the adoption of the resolution or amendment.

HISTORY: 143 v H 19. Eff 4-13-80.

Research Aids

Limitation on procedural challenges:

O-Jur3d: Bldg, Zon §§ 287, 296, 298, 301, 305, 307

Am-Jur2d: Zoning § 339 et seq

§ 519.13 Township board of zoning appeals; compensation and expenses.

In any township which adopts zoning regulations the board of township trustees shall appoint a township board of zoning appeals of five members who shall be residents of the unincorporated territory in the township included in the area zoned. The terms of all 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. Members shall be removable for the same causes and in the same manner as provided by section 519.04 of the Revised Code. Vacancies shall be filled by the board of township trustees and shall be for the unexpired term. The members may be allowed their expenses, or such compensation, or both, as the board of township trustees may approve and provide.

The board of zoning appeals may within the limits of the moneys appropriated by the board of township trustees for the purpose, employ such executives, professional, technical, and other assistants as it deems necessary.

HISTORY: GC § 3180-37: 122 v 597 (609), § 37; Bureau of Code Revision, 10-1-53: 127 v 363. Eff 9-17-57.

Cross-References to Related Sections

Penalty, RC § 519.99.

Action to prevent violations of zoning regulations: special counsel, RC § 519.24.

Recommendations of township zoning commission; organization, powers and compensation of commission, RC § 519.05.

Township zoning commission, RC § 519.04.

Research Aids

Board of appeals:

O-Jur3d: Bldg, Zon § 272

Am-Jur2d: Zoning § 61

C.J.S.: Zon&LP § 180 et seq

West Key No. Reference

Zoning 354

Law Review

Litigating the zoning case in Ohio: suggestions to fill the textbook void. Edward Kancler. 24 ClevStLRev 33 (1975).

APPENDIX B

ORC SECTIONS REGARDING FARM MARKETS

See following copies of the Ohio Revised Code.

application under sections 517.23 and 517.24 of the Revised Code, the probate court of the county in which the decedent is buried shall issue a writ of mandamus requiring the officers to disinter the remains or to grant permission for their disinterment.

HISTORY: RS § 1470-5: 91 v 231, § 3; GC § 3469; Bureau of Code Revision, 10-1-53: 146 v H 328, Eff 11-24-95.

§ 517.26 Removal of dead.

When remains laid in a vault or other receptacle become offensive, on the complaint of a householder of the township, the board of township trustees immediately shall issue an order to the sexton or other person in charge of the vault or receptacle to have the remains immediately interred. If the interment is neglected for three days after the complaint, any judge of the county court within the county may issue a written order to a householder of the township to inter the remains at the expense of the board and shall allow a reasonable charge for the service.

HISTORY: RS § 1471: S&C 228: 54 v 187, § 6; GC § 3470; Bureau of Code Revision, 10-1-53: 127 v 1039 (Eff 1-1-58): 146 v H 328, Eff 11-24-95.

Law Review

Who owns the contents of Ohio's ancient graves? William L. Evans, 22 CapitalULRev 711 (1993)

§ 517.29 Execution sale of municipal cemetery.

If a municipal corporation fails to remove a cemetery as provided by section 517.25 of the Revised Code for a period of six months after the removal has been ordered by the probate court, the court shall order the premises sold as upon execution. The sale or other transfer shall not operate to give a purchaser possession until the remains interred in that cemetery have been removed as provided by section 519.07 of the Revised Code.

HISTORY: RS § 1473a: 89 v 272; GC § 3473; Bureau of Code Revision, 10-1-53: 146 v H 328, Eff 11-24-95.

§ 517.30 Monument commemorating soldiers and sailors.

Whenever there is presented to the board of township trustees, a petition signed by not less than thirty per cent of the electors of such township as shown by the most recent general election held therein, requesting the erection of a suitable monument to commemorate the soldiers and sailors who died in the service of the United States or of this state, such board may, by a majority vote, appropriate and expend not more than five hundred dollars from the township funds for the purpose of erecting such monument, according to plans

and specifications furnished or approved by such board.
HISTORY: RS § 1473: S&S 911: 62 v 47; GC § 3474: 110 v 47; Bureau of Code Revision, 10-1-53: 146 v H 99, Eff 8-22-95.

§ 517.31 Care of monument.

In any township in which the board of township trustees has erected a memorial monument as provided by section 517.30 of the Revised Code, or in which the citizens thereof have erected such a monument, either upon the public grounds of such township or upon grounds therein donated or procured by the citizens for such use, and have caused such grounds to be enclosed, the board may take charge of such monument, grounds, and enclosure, and keep them in repair. For such purpose the board may appropriate and expend such sum of money as required from the township funds.

HISTORY: GC § 3474-1: 110 v 47; Bureau of Code Revision, 10-1-53: 144 v S 125, Eff 4-16-93.

§ 519.01 "Agriculture" defined.

As used in section 519.02 to 519.25 of the Revised Code, "agriculture" includes farming; ranching; aquaculture; apiculture; horticulture; viticulture; animal husbandry, including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production.

HISTORY: Bureau of Code Revision, 10-1-53: 145 v S 134, Eff 6-20-94.

ALR

Construction and application of zoning laws setting minimum lot size requirement. 2 ALR5th 533

CASE NOTES AND OAG

1. (1993) The bottling of natural spring water does not constitute "agriculture" as that term is used in RC § 519.01, and as a result, the land on which it occurs is not exempt from township zoning pursuant to RC § 519.21. OAG No. 93-053

§ 519.02 Township trustees may regulate building and land use in unincorporated territory for public purpose.

ALR

Validity of ordinances restricting location of adult entertainment or sex-oriented businesses. 10 ALR5th 535

B

ship zoning regulation is not terminated by virtue of an amendment to the regulation changing the area classification from residential to commercial. The exclusive method of uncompensated termination as provided by statute is voluntary discontinuance for two years or more: OAG No. 89-027.

17. (1952) Under CC § 3180-43 (RC § 519.19), and a zoning regulation adopted by township trustees pursuant thereto, authorizing the extension of a nonconforming use, an owner of land in the area regulated, having previously erected a store for the sale of food and other merchandise, could not thereafter erect a motel, which is forbidden by such zoning regulations, and the fact that he had contemplated the erection of such motel prior to the adoption of such regulation, and intended to sell food from such store to the occupants of the motel, would not constitute such motel an extension of such store building: 1952 OAG No. 1828.

§ 519.20 Outdoor advertising classified as business use.

For the purposes of sections 519.02 to 519.25, inclusive, of the Revised Code, outdoor advertising shall be classified as a business use and be permitted in all districts zoned for industry, business, or trade, or lands used for agricultural purposes.

HISTORY: CC § 3180-44: 122 + 597 (611), § 44: Bureau of Code Revision, Eff 10-1-53.

Cross-References to Related Sections

Penalty, RC § 519.99.

Action to prevent violations of zoning regulations: special counsel, RC § 519.24.

Recommendations of township zoning commission: organization, powers and compensation of commission, RC § 519.05.

Township zoning commission, RC § 519.04.

Research Aids

Signs and billboards:

O-Jur3d: Bldg, Zon §§ 205, 229

Am-Jur2d: Zoning § 125

C.J.S.: Zon&LP § 130

West Key No. Reference

Zoning 282

ALR

Annotation, validity of provisions for amortization of nonconforming uses. 22 ALR3d 1134.

Classification and maintenance of advertising structure as nonconforming use. 80 ALR3d 630.

Validity and construction of ordinance prohibiting roof signs. 76 ALR3d 1162.

Validity and construction of provision prohibiting or regulating advertising sign overhanging street or sidewalk. 80 ALR3d 687.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway. 81 ALR3d 564.

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like. 80 ALR3d 740.

Validity of regulations restricting height of free standing advertising signs. 56 ALR3d 1207.

CASE NOTES AND OAG

1. (1954) The Ohio statutes (RC § 303.20 and RC § 519.20) declare in positive terms that billboard advertising is a legitimate business and not a nuisance per se: Central Outdoor Adv. Co., Inc. v. Evendale, 54 OO 354, 124 NE2d 189 (CP).

§ 519.21 Powers not conferred by chapter.

(A) Except as otherwise provided in division (B) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture, and no zoning certificate shall be required for any such building or structure.

(B) A township zoning resolution, or an amendment to such resolution, may in any platted subdivision approved under section 711.05, 711.09, or 711.10 of the Revised Code, or in any area consisting of fifteen or more lots approved under section 711.131 [711.13.1] of the Revised Code that are contiguous to one another, or some of which are contiguous to one another and adjacent to one side of a dedicated public road, and the balance of which are contiguous to one another and adjacent to the opposite side of the same dedicated public road regulate:

(1) Agriculture on lots of one acre or less:

(2) Buildings or structures incident to the use of land for agricultural purposes on lots greater than one acre but not greater than five acres by: set back building lines; height; and size;

(3) Dairying and animal and poultry husbandry on lots greater than one acre but not greater than five acres when at least thirty-five per cent of the lots in the subdivision are developed with at least one building, structure, or improvement that is subject to real property taxation or that is subject to the tax on manufactured homes under section 4503.06 of the Revised Code. After thirty-five per cent of the lots are so developed, dairying and animal and poultry husbandry shall be considered nonconforming use of land and buildings or structures pursuant to section 519.19 of the Revised Code.

Division (B) of this section confers no power on any township zoning commission, board of township trustees, or board of zoning appeals to regulate agriculture, buildings or structures, and dairying and animal and poultry husbandry on lots greater than five acres.

(C) Such sections confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit in a

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district zoned for agricultural, industrial, residential, or commercial uses, the use of any land for a farm market where fifty per cent or more of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year. However, a board of township trustees, as provided in section 519.02 of the Revised Code, may regulate such factors pertaining to farm markets as size of the structure, size of parking areas that may be required, set back building lines, and egress or ingress, where such regulation is necessary to protect the public health and safety.

HISTORY: CC §§ 3180-45, 3180-46; 122 v 597(611), §§ 45, 46; Bureau of Code Revision, 10-1-53: 131 v 245 (Eff 11-5-65); 126 v H 569 (Eff 8-9-76); 138 v H 302 (Eff 7-12-80); 139 v S 78 (Eff 6-29-82); 140 v H 486 (Eff 3-14-85); 141 v H 582, Eff 3-5-87.

Cross-References to Related Sections

Penalty, RC § 519.20.

Action to prevent violations of zoning regulations: special counsel, RC § 519.24.

Recommendations of township zoning commission: organization, powers and compensation of commission, RC § 519.05.

Township zoning commission, RC § 519.04.

Research Aids

Certain uses exempt from township zoning:

O-Jur3d: Bldg. Zon §§ 194, 200, 201, 203, 230

Am-Jur2d: Zoning §§ 149-153

C.J.S.: Zon&LP § 3 et seq

West Key No. Reference

Zoning 353-355

ALR

Applicability of zoning regulations to projects of non-governmental public utility as affected by utility's having power of eminent domain. 87 ALR3d 1265.

Construction and application of terms "agricultural," "farm," "farming," or the like, in zoning regulations. 97 ALR2d 702.

Zoning regulation of intoxicating liquor as pre-empted by state law. 65 ALR4th 555.

CASE NOTES AND OAG

INDEX

Agricultural use—

Dogs, raising, as. 3

Dwelling house on agricultural land. 12, 27

Horses, keeping, as. 4, 13, 19

Migrant laborers, housing for, as. 26

Mink ranch. 31

Occupation of landowner as affecting exemption. 28

Septage. 14

Structure incident to. 8, 12, 26-28

Airport. 15-17

Constitutionality of zoning ordinance. 10

Garbage and refuse disposal facility, when inapplicable to. 22

Industry, exclusion of. 30

Limitations on regulations. 29

Power siting commission determination, reversal of. 2

Public utility—

Cablevision. 21

Constitutionality. 1

Designation. 6

Landfill. 29

Location of. 22

Motor cargo carrier, transport company. 9, 11

Radio broadcasting station. 7

Satellite dish. 18

Water system, non-profit corporation providing. 23

Water tower construction as part of. 25

Zoning certificate not required. 24

Sludge. 5

1. (1982) The exemption for public utilities from local zoning regulations, provided in RC § 519.21, does not result in an unconstitutional taking of private property rights: State ex rel. Taylor v. Whitehead, 70 OS2d 37, 24 OQ3d 88, 434 NE2d 732.

2. (1977) Pursuant to RC §§ 4906.12 and 4903.13, this court will not reverse a determination of the Power Siting Commission of Ohio on the grounds that it is against the weight of the evidence, unless that determination is unreasonable or unlawful: Chester Township v. Power Siting Commission, 49 OS2d 231, 3 OQ3d 367, 361 NE2d 436.

3. (1975) The breeding, raising and care of dogs constitutes animal husbandry, as that term is used in RC § 519.01. Such animal husbandry is included in the term "agriculture," as that pursuit is defined in RC § 519.01, and does constitute the use of land for agriculture within the meaning of RC § 519.21: Harris v. Hootstown Zoning Bd. of Appeals, 44 OS2d 144, 73 OQ2d 451, 338 NE2d 763.

4. (1958) A township zoning resolution may not prohibit the use of any land for agricultural purposes, including animal husbandry, which includes the keeping of horses: Mentor Lagoons, Inc. v. Zoning Board, 168 OS 113, 5 OQ2d 372, 151 NE2d 533.

5. (1991) A township zoning resolution which totally bans the application of sludge to land is in conflict with RC § 6111.46 and is thus invalid: Perry v. Providence Twp., 63 OApp3d 377, 578 NE2d 886.

6. (1985) The designation of a company as a public utility by the Public Utilities Commission for purposes of regulation under RC Chapter 4905, is not controlling on the question whether the company is a public utility exempt from township zoning under RC § 519.21: McGinnis v. Quest Microwave VII, Inc., 24 OApp3d 220, 24 OBR 398, 494 NE2d 1150.

7. (1983) The issue of whether a radio broadcasting station is a public utility so as to be exempt from township zoning regulations, pursuant to RC § 519.21, is a mixed question of law and fact and a trial court errs when it grants a radio broadcasting station's motion for summary judgment and, without evidence, finds that the station is a public utility and necessarily exempt from township zoning regulations: Montville Bd. of Twp. Trustees v. WDBN, Inc., 10 OApp3d 284, 10 OBR 400, 461 NE2d 1345.

8. (1969) By virtue of RC § 519.21 a township zoning ordinance necessarily includes an exception for structures incident to agricultural use: State v. Huffman, 20 OApp2d 263, 49 OQ2d 357, 253 NE2d 812.

9. (1958) A motor transportation company authorized by the state and national governments to conduct, over the public highways, the hauling of chattel property, whose service is available along its designated route to the public generally and indiscriminately, and whose rates and service are determined by a regulatory body having power to fix just and reasonable charges, is a public utility within the meaning of the exemption clause of the township zon-

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APPENDIX C

OTHER PERTINENT ORC SECTIONS

See following copies of the Ohio Revised Code.

CASE NOTES AND OAG

INDEX

Compatibility of office. 7, 8
 Conflict of interest. 5, 6, 10
 Health insurance. 4
 Jurisdiction. 1-3
 Prosecuting attorney, legal advice. 11
 Special counsel. 9

1. (1975) The court of common pleas has subject matter jurisdiction to consider the constitutionality of a zoning ordinance in a declaratory judgment action even though plaintiff has not exhausted administrative remedies which would be onerous or unduly expensive: *Gates Mills Invest. Co. v. Pepper Pike*, 44 OS2d 73, 73 OO2d 321, 337 NE2d 777.

2. (1975) A municipal board of zoning appeals is without jurisdiction to hear or decide the constitutionality of zoning ordinances: *SMC, Inc. v. Laudi*, 44 OApp2d 325, 73 OO2d 378, 338 NE2d 547.

3. (1975) The court of common pleas does sustain jurisdiction to determine the constitutionality of municipal zoning ordinances in an appeal from a board of zoning appeals pursuant to RC Chapter 2506.: *SMC, Inc. v. Laudi*, 44 OApp2d 325, 73 OO2d 378, 338 NE2d 547.

4. (1990) Members of the township zoning commission appointed pursuant to RC § 519.04, members of the township board of zoning appeals appointed pursuant to RC § 519.13, and the township zoning inspector appointed pursuant to RC § 519.16 are not township officers for purposes of RC § 505.60. The circumstances in which such persons are entitled to receive health insurance benefits under RC § 505.60(A) depend upon whether the position is a full-time or part-time employment, as determined by the facts of each case. (1955 Op. Att'y Gen. No. 4893, p. 89, overruled.); OAG No.90-077.

5. (1990) There is no conflict of interest if a member of the township board of trustees is the daughter-in-law of a member of that township's board of zoning appeals, provided that there is no violation of a statutory provision subject to interpretation by the Ohio Ethics Commission pursuant to RC § 102.08: OAG No.90-040.

6. (1990) There is no conflict of interest if a member of the township zoning commission is the son of a member of that township's board of zoning appeals, provided that there is no violation of a statutory provision subject to interpretation by the Ohio Ethics Commission pursuant to RC § 102.08: OAG No.90-040.

7. (1973) The positions of county treasurer and member of a township board of zoning appeals are incompatible: OAG No.73-127.

8. (1966) Members of the township zoning commission may not also serve on the township board of zoning appeals: OAG No.66-034.

9. (1964) A board of township trustees has no authority to employ special counsel to appeal a decision of a township board of zoning appeals unless the township is a party to the proceeding before the township board of zoning appeals: 1964 OAG No.810.

10. (1964) The director of a regional-planning commission, established pursuant to RC § 713.21 may not be hired as a consultant to a township zoning commission or township board of zoning appeals because he may thereby be placed in the position of serving conflicting interests: 1964 OAG No.796.

11. (1955) The legal advice which a prosecuting attor-

ney is required to give a township board of zoning appeals is limited to matters pertaining to the exercise of its administrative or ministerial functions and pertaining to what decisions the law authorizes the board to make, but does not include advice on factual or policy determinations to be made by such board, or like matters of a judicial or quasi-judicial nature: 1955 OAG No.4893.

§ 519.14 Powers of township board of zoning appeals.

The township board of zoning appeals may:

(A) Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of sections 519.02 to 519.25 of the Revised Code, or of any resolution adopted pursuant thereto;

(B) Authorize, upon appeal, in specific cases, such variance from the terms of the zoning resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done;

(C) Grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution.

(D) Revoke an authorized variance or conditional zoning certificate granted for the extraction of minerals, if any condition of the variance or certificate is violated.

The board shall notify the holder of the variance or certificate by certified mail of its intent to revoke the variance or certificate under division (D) of this section and of his right to a hearing before the board, within thirty days of the mailing of the notice, if he so requests. If the holder requests a hearing, the board shall set a time and place for the hearing, and notify the holder. At the hearing, the holder may appear in person, by his attorney or other representative, or he may present his position in writing. He may present evidence and examine witnesses appearing for or against him. If no hearing is requested, the board may revoke the variance or certificate without a hearing. The authority to revoke a variance or certificate is in addition to any other means of zoning enforcement provided by law.

In exercising the above-mentioned powers, such board may, in conformity with such sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end has all powers of the officer from whom the appeal is taken.

HISTORY: GC § 3180-38: 122 v 597 (609), § 38; Bureau of Code Revision. 10-1-53: 127 v 363 (Eff 9-17-57); 135 v H 585. Eff 7-22-74. 60

Cross-References to Related Sections

Penalty, RC § 519.99.

Action to prevent violations of zoning regulations; special counsel, RC § 519.24.

Limitations on zoning power; cellular telephone towers, RC § 519.21.1.

Recommendations of township zoning commission; organization, powers and compensation of commission, RC § 519.05.

Township zoning commission, RC § 519.04.

Research Aids

Powers of board of appeals:

O-Jur3d: Bldg, Zon §§ 271, 275, 279, 280, 282, 283, 289

Am-Jur2d: Zoning § 62

C.J.S.: Zon&LP §§ 21 et seq, 180 et seq

West Key No. Reference

Zoning 354, 356

ALR

Standing of zoning board of appeals or similar body to appeal reversal of its decision. 13 ALR4th 1130.

What constitutes "incidental" or "accessory" use of property zoned, and primarily used, for business and commercial purposes. 60 ALR4th 907.

Zoning board's grant of new application for zoning change, variance, or special exception after denial of previous application covering same property or part thereof. 52 ALR3d 494.

Law Review

Litigating the zoning case in Ohio: suggestions to fill the textbook void. Edward Kancler. 24 ClevStLRev 33 (1975).

CASE NOTES AND OAG

INDEX

Appeal, 12, 14

Conditional use, 1, 6, 10, 11

Declaratory judgment, 8

Enforcement, 22

Parties, 7, 8

Res judicata, 2, 3

Sunshine law, 26

Variance, 2, 4, 5, 9, 12-21, 23-25

1. (1988) Where a conditional zoning certificate is subject to conditions authorized by the township's zoning resolution, and one such condition places a minimum setback distance for particular uses, such condition is not confiscatory if the property could be used in a manner permitted by the zoning resolution, and would not deny the owner reasonable use of his land: *Valley Auto Lease of Chagrin Falls, Inc. v. Auburn Twp. Bd. of Zoning Appeals*, 38 OS3d 184, 527 NE2d 825.

2. (1987) Res judicata will not bar the grant of an application for a variance, after denial of a prior application covering the same property, upon a showing of changed circumstances: *Set Products, Inc. v. Bainbridge Twp. Bd. of Zoning Appeals*, 31 OS3d 260, 31 OBR 463, 510 NE2d 373.

3. (1987) The doctrine of res judicata applies to the decisions of a township board of zoning appeals relating to the grant or denial of variances pursuant to RC § 519.14: *Set*

Products, Inc. v. Bainbridge Twp. Bd. of Zoning Appeals, 31 OS3d 260, 31 OBR 463, 510 NE2d 373.

4. (1984) Denial of a variance is not an abuse of discretion where the landowner created his own hardship by refusing to use his surrounding property to meet the minimum lot size: *Reed v. Rootstown Twp. Bd. of Zoning Appeals*, 9 OS3d 54, 9 OBR 280, 498 NE2d 840.

5. (1982) A variance authorizes an otherwise prohibited use. A special permit or "exception" authorizes a use permitted by the zoning code, with the applicable conditions or restrictions: *Nunamaker v. Bd. of Zoning Appeals*, 2 OS3d 115, 2 OBR 684, 443 NE2d 172.

6. (1980) A landowner is not entitled to a conditional use permit where he admittedly does not meet the legislative criteria and does not claim particular circumstances or special deprivation: *Cerzeny v. Richfield Township*, 82 OS2d 339, 16 OO3d 396, 405 NE2d 1034.

7. (1980) The board, which was the named party, stood in the zoning inspector's place; and the zoning inspector, despite the fact that he was not a named party, must be considered to have been a party to the previous action: *State ex rel. Westchester v. Bacon*, 61 OS2d 42, 15 OO3d 53, 399 NE2d 81.

8. (1975) The surrounding property owners are not necessary parties to a declaratory judgment action challenging the constitutionality of a township zoning ordinance as it applies to a specific parcel of property: *Driscoll v. Austintown Associates*, 42 OS2d 263, 71 OO2d 247, 328 NE2d 395.

9. (1958) Ordinarily, the matter, as to whether a variance should or should not be authorized in a specific case by a township board of zoning appeals which is acting pursuant to RC § 519.14 and similar provisions of a township zoning resolution, is a matter within the sound discretion of such board: *Mentor Lagoons, Inc. v. Zoning Board*, 168 OS 113, 5 OO2d 372, 151 NE2d 533.

10. (1989) Considerations of practical difficulties and unnecessary hardship are not relevant to the issuance of a conditional use zoning permit, as opposed to a zoning variance, since a conditional use is not prohibited by state or local legislation, but is subject to limitations imposed for the purpose of restraining the discretion of local zoning boards: *Families Against Reilly/Morgan Sites v. Butler County Board of Zoning Appeals*, 58 OApp3d 90, 584 NE2d 1113.

11. (1986) The objections of a large number of residents of an affected neighborhood are not a sound basis for the denial of a zoning certificate: *Pinnacle Woods Survival Game, Inc. v. Hambden Twp. Zoning Inspector*, 33 OApp3d 139, 514 NE2d 908.

12. (1986) An appeal from a decision under RC § 519.14(A) is not a precondition to an appeal for a variance under RC § 519.14(B): *Peterson v. Washington Ct. Athletic Club*, 28 OApp3d 90, 28 OBR 133, 502 NE2d 252.

13. (1986) A showing of "practical difficulties" will suffice to support the grant of a variance which relates solely to area requirements: *Peterson v. Washington Ct. Athletic Club*, 28 OApp3d 90, 28 OBR 133, 502 NE2d 252.

14. (1986) In an appeal of the grant of a variance, the burden is on appellant to prove that the grant was unconstitutional, illegal, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable and probative evidence on the record as a whole: *Peterson v. Washington Ct. Athletic Club*, 28 OApp3d 90, 28 OBR 133, 502 NE2d 252.

15. (1984) Where the owner of commercial property is aware of the zoning restrictions thereon and acts in direct contravention of that ordinance, he has created his own

hardship and generally cannot thereafter apply for a zoning variance based on such hardship: *FRC of Kamms Corner v. Cleveland Bd. of Zoning Appeals*, 14 OApp3d 372, 14 OBR 477, 471 NE2d 845.

16. (1976) Standards in enabling legislation which provide that a variance may be granted by a board of zoning appeals if there "are practical difficulties or unnecessary hardships in the way of carrying out the strict interpretation of zoning ordinance and so long as the granting of such exception or variance will be in harmony with general purpose and intent of said ordinance," or some similar language, are valid standards. However, such standards do not authorize the board of zoning appeals to grant a non-conforming use variance for a use not provided for in the zoning ordinance affecting the property and for a use not in harmony with the zoning affecting the property. An administrative agency cannot exceed the authority given to it by the standards in its enabling legislation in granting a variance. Further, an administrative agency cannot rezone property under the guise of a variance. Granting a variance for a U-4, local retail use, such as a service station, for property zoned U-1, single-family, would exceed the authority of the above standards and would constitute rezoning by an administrative agency: *Standard Oil Co. v. Warrensville Heights*, 48 OApp2d 1, 2 OO3d 4, 355 NE2d 495.

17. (1973) The power of a township board of zoning appeals to grant a variance is derived from RC § 519.14 and not from the township zoning resolution and provisions of such resolution which purport to create either more stringent or more liberal standards for the granting of a variance than those set forth in the statute are invalid and unenforceable not because they are unconstitutional, but because they exceed the legislative authority delegated to the board of township trustees and the powers given township board of zoning appeals by the General Assembly: *Cole v. Board of Zoning Appeals*, 39 OApp2d 177, 68 OO2d 363, 317 NE2d 65.

18. (1973) The standards set forth in RC § 519.14 for the granting of variance by a township board of zoning appeals are fourfold: (1) the variance will not be contrary to the public interest; (2) owing to special conditions literal enforcement of the zoning resolution will result in unnecessary hardship; (3) the spirit of the zoning resolution shall be observed; and (4) substantial justice shall be done: *Cole v. Board of Zoning Appeals*, 39 OApp2d 177, 68 OO2d 363, 317 NE2d 65.

19. (1971) A township board of zoning appeals is an administrative body and is without jurisdiction to grant a "variance" which would, in effect, amend the use provisions of the zoning ordinance, in the absence of a showing of unusual hardship caused by the use restrictions imposed by the ordinance. Granting of the variance without such showing exceeds the authority of the board of zoning appeals and is illegal and void: *Fox v. Shriver-Allison Co.*, 28 OApp2d 175, 57 OO2d 234, 275 NE2d 637.

20. (1963) Pursuant to paragraph (B) of RC § 519.14, the refusal of a township board of zoning appeals to grant a zoning variance is reviewable on the question of the reasonableness of such decision: *In re McDonald*, 119 OApp 15, 26 OO2d 100, 196 NE2d 333.

21. (1963) A board of zoning appeals has the right to correct a clerical error in its order, but may not amend an order of variance some years after the order has been granted: *Haba v. Cuff*, 28 OO2d 266, 201 NE2d 343 (App).

22. (1963) A municipal corporation is not estopped from enforcing a zoning regulation because of a failure of the

officers of such municipality to make timely objection to the violation of the zoning regulation: *Haba v. Cuff*, 28 OO2d 266, 201 NE2d 343 (App).

23. (1991) The proper standard to be applied to a request for area variances is one of practical difficulties even though the application was made to a township: *Zangara v. Twp. Trustees of Chester Twp.*, No.90-C-1581 (11th Dist.).

24. (1990) When a variance granted pursuant to RC § 519.14(B) describes the property involved by street or house number only, the variance applies to the entire property located at that address unless the public records pertaining to the variance or to the assignment of such numbers indicate that the number as used in the variance pertains to only part of that property: OAC No.90-081.

25. (1990) When, pursuant to a variance granted under RC § 519.14(B), a property owner has established a land use on only part of his property, a new variance is not required to expand that use to the remaining property unless the original variance limited the area of the property which could be devoted to such use: OAC No.90-081.

26. (1985) A township board of zoning appeals is a "public body" for purposes of RC § 121.22.2. A township board of zoning appeals may not conduct, in an executive session, deliberations concerning a zoning appeal heard pursuant to RC § 519.14(A) or (B): OAC No.85-044.

§ 519.15 Rules, organization and meetings of zoning appeals board.

The township board of zoning appeals shall organize and adopt rules in accordance with the zoning resolution. Meetings of the board of zoning appeals shall be held at the call of the chairman, and at such other times as the board determines. The chairman, or in his absence the acting chairman, may administer oaths, and the board of zoning appeals may compel the attendance of witnesses. 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 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.

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. Such appeal shall be taken within twenty days after the decision by filing, with the officer from whom the appeal is taken and with the board of zoning appeals, a notice of appeal specifying the grounds. The officer from whom the appeal is taken shall forthwith transmit to the board of zoning appeals all the papers constituting the record upon which the action appealed from was taken.

The board of zoning appeals shall fix a reasonable time for the public hearing of the appeal, give at least ten days' notice in writing to the parties in interest, give notice of such public hearing by one

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ship zoning regulation is not terminated by virtue of an amendment to the regulation changing the area classification from residential to commercial. The exclusive method of uncompensated termination as provided by statute is voluntary discontinuance for two years or more: OAG No.69-027.

17. (1952) Under GC § 3180-43 (RC § 519.19), and a zoning regulation adopted by township trustees pursuant thereto, authorizing the extension of a nonconforming use, an owner of land in the area regulated, having previously erected a store for the sale of food and other merchandise, could not thereafter erect a motel, which is forbidden by such zoning regulations, and the fact that he had contemplated the erection of such motel prior to the adoption of such regulation, and intended to sell food from such store to the occupants of the motel, would not constitute such motel an extension of such store building: 1952 OAG No.1828.

§ 519.20 Outdoor advertising classified as business use.

For the purposes of sections 519.02 to 519.25, inclusive, of the Revised Code, outdoor advertising shall be classified as a business use and be permitted in all districts zoned for industry, business, or trade, or lands used for agricultural purposes.

HISTORY: GC § 3180-44; 122 v 597 (611). § 44: Bureau of Code Revision. Eff 10-1-53.

Cross-References to Related Sections

Penalty, RC § 519.99.

Action to prevent violations of zoning regulations; special counsel. RC § 519.24.

Recommendations of township zoning commission; organization, powers and compensation of commission. RC § 519.05.

Township zoning commission. RC § 519.04.

Research Aids

Signs and billboards:

O-Jur3d: Bldg, Zon §§ 205, 229

Am-Jur2d: Zoning § 125

C.J.S.: Zon&LP § 130

West Key No. Reference

Zoning 282

ALR

Annotation, validity of provisions for amortization of nonconforming uses. 22 ALR3d 1134.

Classification and maintenance of advertising structure as nonconforming use. 80 ALR3d 630.

Validity and construction of ordinance prohibiting roof signs. 76 ALR3d 1162.

Validity and construction of provision prohibiting or regulating advertising sign overhanging street or sidewalk. 80 ALR3d 687.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway. 81 ALR3d 564.

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like. 80 ALR3d 740.

Validity of regulations restricting height of free standing advertising signs. 56 ALR3d 1207.

CASE NOTES AND OAG

1. (1954) The Ohio statutes (RC § 303.20 and RC § 519.20) declare in positive terms that billboard advertising is a legitimate business and not a nuisance per se: Central Outdoor Adv. Co., Inc. v. Evendale, 54 OO 354, 124 NE2d 189 (CP).

§ 519.21 Powers not conferred by chapter.

(A) Except as otherwise provided in division (B) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for viticulture and selling wine and that are located on land any part of which is used for viticulture, and no zoning certificate shall be required for any such building or structure.

(B) A township zoning resolution, or an amendment to such resolution, may in any platted subdivision approved under section 711.05, 711.09, or 711.10 of the Revised Code, or in any area consisting of fifteen or more lots approved under section 711.131 [711.13.1] of the Revised Code that are contiguous to one another, or some of which are contiguous to one another and adjacent to one side of a dedicated public road, and the balance of which are contiguous to one another and adjacent to the opposite side of the same dedicated public road regulate:

(1) Agriculture on lots of one acre or less;

(2) Buildings or structures incident to the use of land for agricultural purposes on lots greater than one acre but not greater than five acres by: set back building lines; height; and size;

(3) Dairying and animal and poultry husbandry on lots greater than one acre but not greater than five acres when at least thirty-five per cent of the lots in the subdivision are developed with at least one building, structure, or improvement that is subject to real property taxation or that is subject to the tax on manufactured homes under section 4503.06 of the Revised Code. After thirty-five per cent of the lots are so developed, dairying and animal and poultry husbandry shall be considered nonconforming use of land and buildings or structures pursuant to section 519.19 of the Revised Code.

Division (B) of this section confers no power on any township zoning commission, board of township trustees, or board of zoning appeals to regulate agriculture, buildings or structures, and dairying and animal and poultry husbandry on lots greater than five acres.

(C) Such sections confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit in a

zoning regulations limiting the use of such land for raising minks: 1954 OAG No.3607.

[§ 519.21.1] § 519.211 Limitations on zoning power; cellular telephone towers.

(A) Except as otherwise provided in division (B) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business.

(B) Such sections do confer such power on any board of township trustees or board of zoning appeals with respect to any tower that is owned or used by a public utility, used in the provision of cellular telephone communications service, and proposed to be located in an area zoned for residential use.

In the case of a public utility that plans to construct a tower in the township in an area zoned for residential use that is to be used in the provision of cellular telephone communications service, the public utility shall:

(1) Provide written notice, by certified mail, of the public utility's intent to construct such tower and the information specified in division (B)(3) of this section to the owners of property, as listed on the county auditor's current tax list, whose land is contiguous to or directly across the street from the property on which the public utility plans to construct the tower. If the notice is returned unclaimed or refused, the public utility shall mail the notice by regular mail. The failure of delivery of any such notice does not invalidate the notice.

(2) Provide written notice, by certified mail, to the board of township trustees of the township in which the tower is to be located of the public utility's intent to construct a tower and the information specified in division (B)(3) of this section. The notice to the board shall include verification that written notice has been provided to the owners of property whose land is contiguous to or directly across the street from the property on which the public utility plans to construct the tower.

(3) The notice referred to in divisions (B)(1) and (2) of this section shall state the public utility's intention to construct a tower, a description of the property sufficient to identify the location of the property on which the tower will be constructed, and that if the property owner has an objection to the location of the tower, he may give notice to the township trustees requesting that the tower location be the subject of zoning procedures contained in sections 519.02 to 519.25 of the Revised Code. Such request shall be made by the property owner by written notice to the township trustees within fif-

teen days of the mailing date of the notice to the property owner by the public utility.

(4) If the township trustees receive the notice from the property owner described in division (B)(3) of this section or if a township trustee has an objection to the location of the tower, they or he shall request that the clerk of the township give written notice to the public utility, within twenty days of the mailing date of the notice from the public utility described in division (B)(3) of this section, that the requirements of sections 519.02 to 519.25 of the Revised Code will be applicable to the proposed location of the tower.

(5) If no notice is received from the property owner described in divisions (B)(1) and (3) of this section or no objection is made by a township trustee, the tower and the location of the tower that is the subject of the procedures in divisions (B)(1) through (4) of this section above will be governed by division (A) of this section with no exception as provided in division (B) of this section.

(C) Such sections confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, or restaurant is permitted.

(D) Such sections do not confer any power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land owned or leased by an industrial firm for the conduct of oil or natural gas well drilling or production activities or the location of associated facilities or equipment when such oil or natural gas obtained by the industrial firm is used for the operation of its own plants.

HISTORY: 141 v H 582 (EH 3-5-87); 144 v H 15, EH 10-15-91.

Cross-References to Related Sections

Penalty, RC § 519.99.

Action to prevent violations of zoning regulations; special counsel, RC § 519.24.

Recommendations of township zoning commission: organization, powers and compensation of commission, RC § 519.05.

Township zoning commission, RC § 519.04.

Research Aids

Limitations on zoning power:

O-Jur3d: Bldg, Zon §§ 200, 201, 203

Am-Jur2d: Zoning §§ 7-10

C.J.S.: Zon&LP § 8 et seq

West Key No. Reference

Zoning 5, 7-10

CASE NOTES AND OAG

1. (1989) An entity is characterized as a public utility if the nature of its operation is a matter of public concern and membership is indiscriminately and reasonably made available to the general public. Radio towers are exempt from zoning regulation when used by public utilities: *Mariano v. Gibbs*, 45 OS3d 310, 544 NE2d 635.

2. (1990) Airports are public utilities exempt from town-

ship zoning regulation: *Swanton Twp. Bd. of Trustees v. Toledo-Lucas Cty. Port Authority*, 66 OApp3d 555, 585 NE2d 871.

3. (1989) The plain language of RC § 1509.39 permits townships to enact and enforce health and safety standards for the drilling and exploration of oil and gas. Thus, the legislature did not intend, by enacting RC § 1509.39, as amended in 1960, to preempt the regulation of oil and gas well site locations: *Excalibur Exploration, Inc. v. Springfield Twp. Bd. of Trustees*, 48 OApp3d 179, 549 NE2d 224.

4. (1988) A facility for the disposal of PCB's that is not a public utility is not exempted from township zoning provisions by RC § 519.211: OAG No.88-053.

5. (1987) Pursuant to RC § 519.02, and subject to the limitations contained in RC §§ 519.21 and 519.21.1, a board of township trustees may adopt zoning provisions regulating structures in a public or private airport, airstrip, or hazard area within an unincorporated area of the township, even if an airport zoning board has been created under RC § 4563.03: OAG No.87-087.

§ 519.22 County rural zoning regulations to take precedence.

Where the people of any township or part thereof have approved county rural zoning regulations in accordance with sections 303.02 to 303.25, inclusive, of the Revised Code, prior to the adoption of a zoning resolution by the board of township trustees, and the township plan includes any area covered by the county rural zoning plan, the zoning resolution adopted by the board of county commissioners shall take precedence over the zoning resolution adopted by the board of township trustees, unless a majority of the voters in such zoned area of the township voting on the issue have voted to have the county rural zoning plan replaced with the township plan of zoning.

HISTORY: CC § 3180-47: 122 v 597(612), § 47; Bureau of Code Revision, Eff 10-1-53.

Cross-References to Related Sections

Penalty, RC § 519.99.

Action to prevent violations of zoning regulations; special counsel, RC § 519.24.

Recommendations of township zoning commission; organization, powers and compensation of commission, RC § 519.05.

Township zoning commission, RC § 519.04.

Research Aids

County rural zoning:

O-Jur3d: Bldg, Zon § 232: Init & Ref § 17

Am-Jur2d: Zoning §§ 146-148

C.J.S.: Zon&LP §§ 36 et seq. 42 et seq

West Key No. Reference

Zoning 231, 234

CASE NOTES AND OAG

1. (1972) The provisions of RC Chapters 303, and 519., controlling conflicts between county and township zoning regulations, have no applicability to the creation of a garbage and refuse disposal facility by a board of county commissioners under RC Chapter 343.: OAG No 72-042

2. (1964) A township may be made subject to an existing zoning plan in the unincorporated part of a county by the procedures set forth in RC §§ 303.03 to 303.11, inclusive: 1964 OAG No.1299.

§ 519.23 Prohibition against violating resolution.

No building shall be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used, and no land shall be used in violation of any resolution, or amendment or supplement to such resolution, adopted by any board of township trustees under sections 519.02 to 519.25, inclusive, of the Revised Code. Each day's continuation of a violation of this section may be deemed a separate offense.

HISTORY: CC § 3180-48: 122 v 597(612), § 48; Bureau of Code Revision, 10-1-53; 125 v 5 361. Eff 10-1-53.

Cross-References to Related Sections

Penalty, RC § 519.99.

Action to prevent violations of zoning regulations; special counsel, RC § 519.24.

Recommendations of township zoning commission; organization, powers and compensation of commission, RC § 519.05.

Township zoning commission, RC § 519.04.

Research Aids

Violation and penalties:

O-Jur3d: Bldg, Zon § 291

Am-Jur2d: Zoning § 242 et seq

C.J.S.: Zon&LP § 355 et seq

West Key No. Reference

Zoning 761 et seq

§ 519.24 Action to prevent violations of zoning regulations; special counsel.

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 sections 519.01 to 519.99, inclusive, of the Revised Code, or of any regulation or provision adopted by any board of township trustees under such sections, such board, the prosecuting attorney of the county, the township zoning inspector, 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 or proceeding to prevent, enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use. The board of township trustees may employ special counsel to represent it in any proceeding or to prosecute any actions brought under this section.

HISTORY: CC § 3180-49: 122 v 597(612), § 49; Bureau of Code Revision, 10-1-53; 127 v 363 (374). Eff 9-17-57.



APPENDIX D
FEE SCHEDULE

See attached fee schedule, as set forth by the Spencer Township Trustees.

