

TOWNSHIP ZONING INSPECTOR

General Overview and Compensation

Enforcing the township zoning resolution can be a monumental task. The Ohio Legislature has given boards of township trustees the ability to delegate portions of this task. According to R.C. § 519.16, a township “may establish and fill the position of township zoning inspector, together with assistants as the board deems necessary.”⁴⁹⁶ As a township employees, the board of trustees “...may fix the compensation for those positions, and may make disbursements for them.”⁴⁹⁷ Accordingly, the township zoning inspector, pursuant to R.C. § 124.11(B), is an unclassified employee that may be dismissed from his or her position at-will, without cause, absent discrimination or malfeasance.⁴⁹⁸

Before assuming the position, the township zoning inspector must give a bond “conditioned upon the faithful performance of the zoning inspector’s official duties.”⁴⁹⁹ The bond must be “signed by a bonding or surety company authorized to do business in this state, or, at the inspector’s option, signed by two or more freeholders having real estate in the value of double the amount of the bond, over and above all encumbrances to the state.”⁵⁰⁰ In order to be acceptable, the surety company or real estate bond must be approved by the trustees.⁵⁰¹ The amount of the bond must be at least \$1,000.00 and not more than \$5,000.00, as fixed or determined by the township board of trustees.⁵⁰² The township fiscal officer is charged with accepting deposit of the bond.⁵⁰³

The zoning inspector is a creature of statute. As a result, all actions of the township zoning inspector must be both derived from and permitted by statute (Ohio Revised Code) or necessarily implied therefrom. Most sections of the Ohio Revised Code that address township zoning are concentrated in Chapter 519. As a result, many of the sections related to township zoning have a statute number that begins with “519.” When consulting the Ohio Revised Code for guidance, a township zoning inspector should consider looking in Chapter 519. However, keep in mind that the Ohio Revised Code contains titles numbered 1 through 63,⁵⁰⁴ therefore issues concerning or relevant to township zoning may be discussed elsewhere in the Ohio Revised Code. For help with legal questions concerning the Ohio Revised Code or other matters, call the Delaware County Prosecuting Attorney’s Office.

⁴⁹⁶ OHIO REV. CODE ANN. § 519.16.

⁴⁹⁷ OHIO REV. CODE ANN. § 519.16.

⁴⁹⁸ *Merritt v. Canton Twp. Bd. of Trs.*, 125 Ohio App.3d 533, 536-37, 708 N.E.2d 1082, 1084 (5th Dist. 1998). See also *Deoma v. Shaker Hts.*, 68 Ohio App.3d 72, 81, 587 N.E.2d 425, 430-431 (8th Dist. 1990) (discussing an appointing authority’s dismissal of an unclassified employee); *Eudela v. Ohio Dept. of Mental Health & Mental Retardation*, 30 Ohio App.3d 113, 116, 506 N.E.2d 947, 950 (10th Dist. 1986) (discussing dismissal of an unclassified employee); *Lee v. Cuyahoga Cty. Court of Common Pleas*, 76 Ohio App.3d 620, 622, 602 N.E.2d 761, 762-763 (8th Dist. 1990) (finding that “...an unclassified employee is appointed at the discretion of the appointing authority and serves at the pleasure of such authority.”).

⁴⁹⁹ OHIO REV. CODE ANN. § 519.161.

⁵⁰⁰ OHIO REV. CODE ANN. § 519.161.

⁵⁰¹ OHIO REV. CODE ANN. § 519.161.

⁵⁰² OHIO REV. CODE ANN. § 519.161.

⁵⁰³ OHIO REV. CODE ANN. § 519.161.

⁵⁰⁴ Titles or topical volumes of the Ohio Revised Code are numbered with odd numbers only, with one exception; thus there are thirty-three actual titles that comprise the Ohio Revised Code.

Powers and Duties

Generally, the township zoning inspector enforces the township zoning resolution.⁵⁰⁵ Although some degree of discretion obviously is necessary in terms of enforcement, it is largely the job of the township zoning inspector to implement the township zoning resolution.⁵⁰⁶ In fact, the responsibilities of the zoning inspector have been described as “ministerial in nature.”⁵⁰⁷ In short, if a project meets all the requirements of the zoning resolution, it should be approved; if it does not, it should not be.⁵⁰⁸

A township zoning inspector has no responsibility or authority to create the township zoning resolution that he or she is charged with enforcing.⁵⁰⁹ That responsibility is shared by the board of zoning commission (BZC) and the board of township trustees. Additionally, the township zoning inspector may not grant variances or conditional uses. Although the township zoning inspector may *distribute* applications for variances and conditional uses, the board of zoning appeals (BZA) hears and decides requests for both variances and conditional uses.⁵¹⁰

Enforcement of the township zoning resolution includes, among other things, issuing permits and inspecting properties for compliance with the zoning resolution.⁵¹¹ In performing these duties, it is important for a township zoning inspector to remember that they are “not a “[l]aw enforcement officer” under R.C. § 2901.01(A)(11) or [Ohio Rules of Criminal Procedure] 2(J).”⁵¹² As a result:

[p]ursuant to the fourth amendment to the United States Constitution, a township zoning inspector may not enter and inspect private property without a search warrant where the owner or occupant of the property does not give consent, unless there is an emergency, the property is open to the public, or the industry conducted on the property has a history of government oversight such that no reasonable expectation of privacy exists.⁵¹³

Compliance inspections must be conducted with this premise in mind.

⁵⁰⁵ PLANNING AND ZONING LAW, *supra* note 335, at § 8:47.

⁵⁰⁶ PLANNING AND ZONING LAW, *supra* note 335, at § 8:47.

⁵⁰⁷ PLANNING AND ZONING LAW, *supra* note 335, at § 8:47 (citing *State ex rel. Ross v. Guion*, 82 Ohio Law Abs. 1, 161 N.E.2d 800, 802 (8th Dist. 1959)).

⁵⁰⁸ PLANNING AND ZONING LAW, *supra* note 335, at § 8:47.

⁵⁰⁹ PLANNING AND ZONING LAW, *supra* note 335, at § 8:47.

⁵¹⁰ OHIO REV. CODE ANN. §§ 519.14(B)-(C).

⁵¹¹ PLANNING AND ZONING LAW, *supra* note 335, at § 8:47.

⁵¹² 1998 Ohio Op. Att’y Gen. No. 98-018.

⁵¹³ 1998 Ohio Op. Att’y Gen. No. 98-018, *overruling in part* 1973 Ohio Op. Att’y Gen. No. 73-116.

Zoning Resolutions

Zoning resolutions are the embodiment of township zoning. They are created pursuant to authority granted under R.C. § 519.02 and act as a comprehensive guide to zoning regulations within the township. Generally, zoning resolutions are divided into various articles, each of which address regulations concerning, but not limited to, individual zoning districts or categories (i.e., FR-1), zoned items (i.e., signs), standards (i.e., general development standards), or enforcement of the zoning resolution.

Though the board of zoning commission (BZC) generally acts to create and draft the zoning resolution, the board of trustees, as the legislative body of the township, has the ultimate authority to approve and adopt the resolution.⁵¹⁴ If adopted by the board of trustees, “the question of whether or not the proposed plan of zoning shall be put into effect” is submitted to the voters.⁵¹⁵ If the majority of voters favor zoning, the resolution shall be put into effect.⁵¹⁶

As the township zoning inspector is only charged with enforcing the township zoning resolution, he or she generally has no responsibility for creating or changing the resolution.⁵¹⁷

Amendments to the zoning resolution are initiated by either the board of zoning commission (BZC) by motion, the trustees by passage of a resolution, or an application by a property owner.⁵¹⁸ The procedure for approving amendments is addressed in R.C. § 519.12. As the procedure for amending the zoning resolution involves many steps, it is addressed in another section of this manual. For further discussion, see the chapter entitled “Board of Zoning Commission.”

Zoning Certificates (Permits)

For purposes of enforcing the township zoning resolution, the township board of trustees “may provide for a system of zoning certificates”.⁵¹⁹ Zoning certificates, commonly referred to as “permits” or “zoning permits,” are required by anyone who wants to use land pursuant to a zoning resolution.⁵²⁰

As with all aspects of its power and authority, “[t]ownships...are constrained to live within the strictures of the Revised Code” in providing for a system of zoning certificates.⁵²¹ R.C. § 519.17 generally provides when a zoning certificate is required. According to that section, “[n]o person shall locate, erect, construct, reconstruct, enlarge, or structurally alter any building or structure within the territory included in a zoning resolution without obtaining a zoning certificate”⁵²² Before a zoning certificate is issued, “the plans for the proposed building or structure [must] fully

⁵¹⁴ See OHIO REV. CODE ANN. §§ 519.02-519.05.

⁵¹⁵ OHIO REV. CODE ANN. § 519.11.

⁵¹⁶ OHIO REV. CODE ANN. § 519.11.

⁵¹⁷ See PLANNING AND ZONING LAW, *supra* note 335, at § 8:47.

⁵¹⁸ OHIO REV. CODE ANN. § 519.12(A)(2).

⁵¹⁹ OHIO REV. CODE ANN. § 519.16.

⁵²⁰ PLANNING AND ZONING LAW, *supra* note 335, at § 8:48.

⁵²¹ PLANNING AND ZONING LAW, *supra* note 335, at § 8:48.

⁵²² OHIO REV. CODE ANN. § 519.17.

comply with the zoning regulations then in effect.”⁵²³ Generally, this means that the current, not the past or proposed, zoning regulations govern the structure or building for which the applicant seeks a certificate. However, there may be rare, fact-specific, instances where this is not the case.

Generally, to obtain a zoning certificate, an application form must be obtained and completed.⁵²⁴ Often, the zoning resolution will specify the process to be followed. Normally, the zoning inspector is the individual charged with distributing these application forms. Fees may be charged for submission of zoning certificate applications as long as those fees are reasonable.⁵²⁵ The Ohio Revised Code, in certain instances, may dictate the amount of the fee to be charged.

Review of Development Plans (Planned Unit Developments)

The township zoning inspector may review or assist in the review of preliminary and final development plans submitted for approval in connection with a planned unit development (PUD) pursuant to R.C. § 519.021. The nature and extent of this review may be provided by the terms for approval of a PUD in the township zoning resolution.

For more information on planned unit developments and the process for approving such developments, see the “Common Issues” chapter of this manual.

Enforcement

It is the duty of the zoning inspector to implement and enforce the township zoning resolution *as written*.⁵²⁶ This means that the zoning inspector may only enforce the terms of the zoning resolution presently in effect. He or she may not add, delete, or substitute any terms, phrases, or provisions into the zoning resolution. Therefore, the enforcement authority of the township zoning inspector is limited solely to the language appearing in the current effective zoning resolution.

In the same respect, the zoning inspector may only refuse to issue or hold a zoning certificate (or permit) when the subject property does not meet the requirements in the zoning resolution for issuing the requested certificate. In other words, a zoning certificate must be issued where a proposed project complies with the terms of the township zoning resolution for issuing the certificate. Note that “courts have been clear that a denial of a permit will not be allowed where there is no regulation prohibiting the sought-after activity.”⁵²⁷

Violations

Violations of the township zoning resolution should be dealt with on a case-by-case basis. A zoning inspector may issue a written notice of a zoning violation to the property owner. Such notice shall state the nature of the violation, the specific section of the zoning resolution that is

⁵²³ OHIO REV. CODE ANN. § 519.17.

⁵²⁴ See Sample Forms.

⁵²⁵ PLANNING AND ZONING LAW, *supra* note 335, at § 8:48; 1998 Ohio Op. Att’y Gen. No. 98-018.

⁵²⁶ See PLANNING AND ZONING LAW, *supra* note 335, at § 8:47.

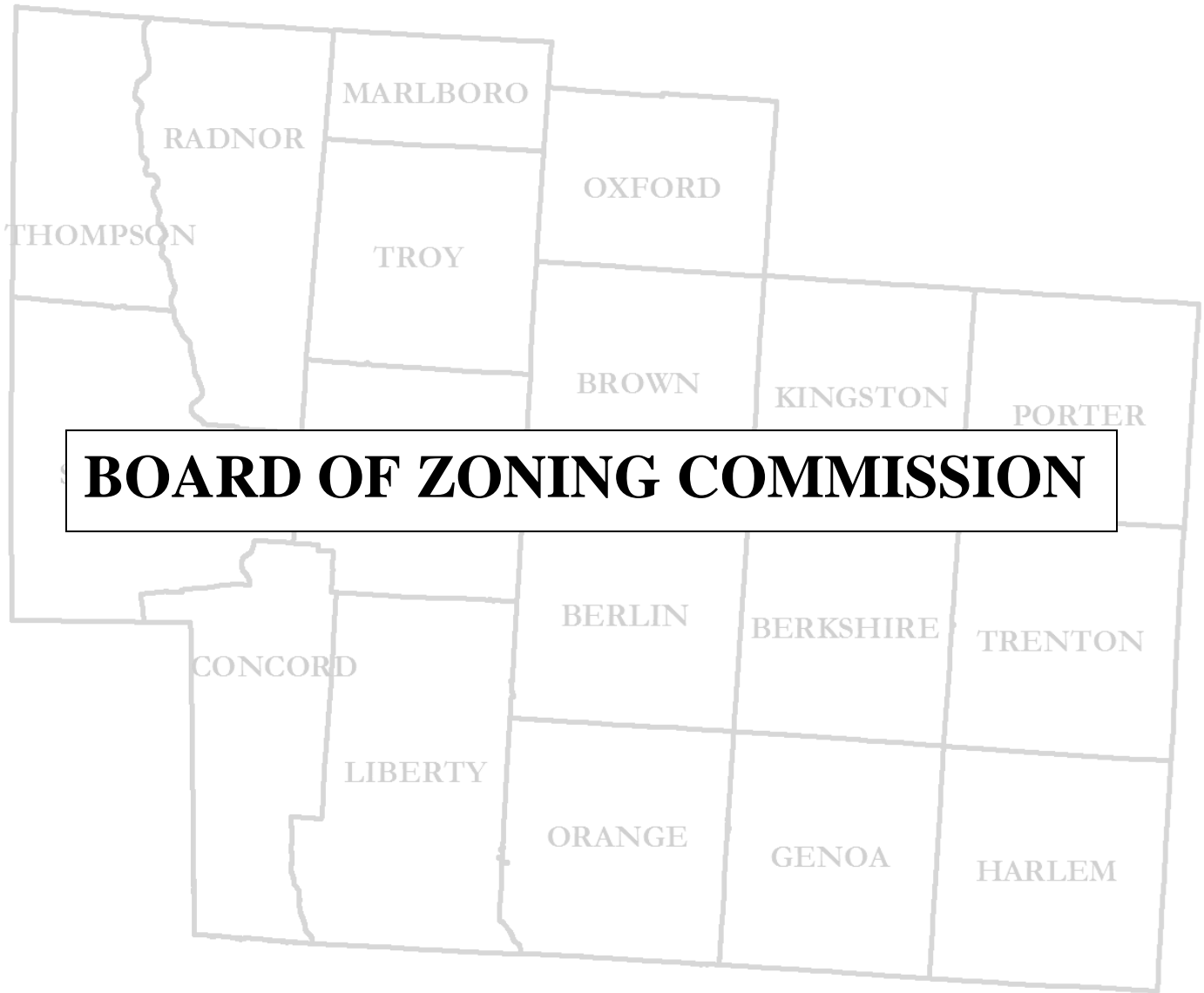
⁵²⁷ PLANNING AND ZONING LAW, *supra* note 335, at § 8:48 (citing *Dingeman Advertising, Inc. v. Bd. of Zoning Appeals of Troy Tp.*, 4th Dist. Richland No. 92-CA-39, 1993 WL 135698, *2 (Apr. 23, 1993)).

being violated (preferably both a section number(s) and the actual language from the zoning resolution should be cited), and provide a specific date by which the violation must be remedied.

Aside from and in addition to issuing a written notice of zoning violation, various other remedies and a penalty for violations are available in R.C. § 519.23 to R.C. § 519.24 and R.C. § 519.99. To avoid unnecessary court action, the township zoning inspector can attempt to resolve the violation on his or her own (i.e., working directly with the property owner to explain the violation and possible remedies and/or issuing a written notice of zoning violation).

In certain instances where the township zoning inspector is unsure how to act, has acted, and been unsuccessful in achieving satisfactory results, or feels immediate action is needed, he or she should consult with the Delaware County Prosecuting Attorney's Office.⁵²⁸

⁵²⁸ See OHIO REV. CODE ANN. § 519.24 (stating that “the township zoning inspector...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.”).



BOARD OF ZONING COMMISSION

General Overview and Term of Office

The township zoning commission (BZC) is the origin of most zoning in the township. In making decisions concerning zoning, the BZC must work closely with the township trustees and the county regional planning commission.

The township board of trustees “shall create and establish a township zoning commission” when they enact zoning.⁵²⁹ The BZC must consist of five (5) members, each of whom are appointed by the board of township trustees.⁵³⁰ Each member of the BZC must be a resident of the unincorporated territory of the township.⁵³¹ If there is a regional planning commission, the board of township trustees may appoint a member of the regional planning commission to the BZC as long as the member is a resident of the unincorporated territory of the township.⁵³²

The township trustees shall establish the terms of the regular BZC members to be of such length and so arranged that the term of one member will expire each year.⁵³³ If there is a vacancy on the BZC, the board of township trustees shall fill the vacancy for the unexpired term.⁵³⁴ Each member or alternate member shall serve until his or her successor is appointed and qualified.⁵³⁵

BZC members may be expelled from their positions in accordance with R.C. § 519.04 for nonperformance of duty, misconduct in office, or for cause by the board.⁵³⁶ Under such circumstances, written charges must be filed with the board of trustees and served on the BZC member in accordance with R.C. § 519.04.⁵³⁷ The BZC member must be given a public hearing on the charges.⁵³⁸ If the BZC member is expelled, the board of trustees must appoint a new BZC member to fill the unexpired term of the BZC member being replaced.⁵³⁹

Once created, the BZC “shall organize, adopt rules for the transaction of its business, and keep a record of its actions and determinations.”⁵⁴⁰

The BZC must have a majority (quorum) of its membership present in order to conduct a meeting/hearing and act. Some zoning resolutions require a majority of the BZC members to vote in order to act, refer to your township’s zoning resolution for more information.

⁵²⁹ OHIO REV. CODE ANN. § 519.04.

⁵³⁰ OHIO REV. CODE ANN. § 519.04.

⁵³¹ OHIO REV. CODE ANN. § 519.04.

⁵³² OHIO REV. CODE ANN. § 519.04.

⁵³³ OHIO REV. CODE ANN. § 519.04.

⁵³⁴ OHIO REV. CODE ANN. § 519.04.

⁵³⁵ OHIO REV. CODE ANN. § 519.04.

⁵³⁶ OHIO REV. CODE ANN. § 519.04.

⁵³⁷ OHIO REV. CODE ANN. § 519.04.

⁵³⁸ OHIO REV. CODE ANN. § 519.04.

⁵³⁹ OHIO REV. CODE ANN. § 519.04.

⁵⁴⁰ OHIO REV. CODE ANN. § 519.05.

Compensation

The board of township trustees may approve and provide for the expenses and compensation of the members of the zoning commission.⁵⁴¹

Powers and Duties

The powers of the BZC are limited. As with all aspects of a township's power and authority, the BZC is a creature of statute and is empowered only with that authority provided by statute (Ohio Revised Code) or necessarily implied therefrom. It is firmly established that townships have no inherent or constitutionally-granted police power to enact zoning legislation and are limited to such zoning authority as they are granted by statute.⁵⁴² By statute, the BZC's main duty is to prepare a zoning plan for the township.⁵⁴³ This zoning plan should include text and maps describing each zoned area of the township.⁵⁴⁴ The township zoning plan shall be written in accordance with a comprehensive plan.⁵⁴⁵

In preparing a zoning plan, the BZC should make use of all resources available.⁵⁴⁶ These resources include the regional planning commission and various county personnel.⁵⁴⁷ Additionally, if funds are available, the BZC may employ outside experts and planning consultants.⁵⁴⁸ The township zoning commission is responsible for keeping records of its actions and business.⁵⁴⁹

Alternate Members

The board of trustees may also appoint two alternate members to the BZC for terms to be decided by the board of trustees.⁵⁵⁰ The alternate members must meet the same qualifications as regular BZC members, including residing in the unincorporated territory of the township.⁵⁵¹ An alternate BZC member will serve until his or her successor is appointed and qualified.⁵⁵²

The purpose of alternate BZC members is to take the place of a regular BZC member at any BZC meeting when a regular member is unable to attend or a conflict of interest arises.⁵⁵³ The procedure for having an alternate member attend a meeting shall be established by resolution by the

⁵⁴¹ OHIO REV. CODE ANN. § 519.05.

⁵⁴² *Bd. of Bainbridge Township Trs. v. Funtime, Inc.*, 55 Ohio St. 3d 106, 108 563 N.E.2d 717, 719 (1990).

⁵⁴³ OHIO REV. CODE ANN. § 519.05.

⁵⁴⁴ OHIO REV. CODE ANN. § 519.05.

⁵⁴⁵ OHIO REV. CODE ANN. § 519.02.

⁵⁴⁶ OHIO REV. CODE ANN. § 519.05.

⁵⁴⁷ OHIO REV. CODE ANN. § 519.05.

⁵⁴⁸ OHIO REV. CODE ANN. § 519.05.

⁵⁴⁹ OHIO REV. CODE ANN. § 519.05.

⁵⁵⁰ OHIO REV. CODE ANN. § 519.04.

⁵⁵¹ OHIO REV. CODE ANN. § 519.04.

⁵⁵² OHIO REV. CODE ANN. § 519.04.

⁵⁵³ OHIO REV. CODE ANN. § 519.04.

trustees.⁵⁵⁴ When attending a meeting in place of a regular member, an alternate BZC member has the power to vote on any matter upon which the absent member has the ability to vote.⁵⁵⁵

Adoption of a Township Zoning Plan (Resolution and Maps)

After the board of township trustees approves a resolution pursuant to R.C. § 519.03 (establishing the intention to proceed with township zoning), the following procedure should be followed in creating a zoning resolution and maps:

1. The township trustees must create and establish a BZC pursuant to R.C. § 519.04.
2. The newly organized BZC should create and prepare a zoning plan, including both text and maps, for the unincorporated territory of the township.⁵⁵⁶ This zoning plan is to be written in accordance with a comprehensive plan.⁵⁵⁷ The plan should represent the BZC's recommendations for carrying out by the board of trustees the powers, purposes, and provisions set forth in R.C. §§ 519.01-519.99.⁵⁵⁸ The BZC should work with county regional planning to develop a zoning plan and maps.⁵⁵⁹ Services, expertise, and resources of other public offices should also be used and consulted in developing the zoning plan and maps. Also, within the limits of funds appropriated by the trustees, the BZC may employ or contract with outside experts and planning consultants to assist in creating the zoning plan.⁵⁶⁰
3. After creating its recommended zoning plan and maps, the BZC must hold at least one public hearing. Notice of the hearing shall be given by one (1) publication in one (1) or more newspapers of general circulation⁵⁶¹ in the township at least thirty (30) days before the date of such hearing.⁵⁶² The notice must "state the place and time at which the text and maps of the proposed zoning resolution may be examined."⁵⁶³ It should also include the date, time, place, and reason for the public hearing.

⁵⁵⁴ OHIO REV. CODE ANN. § 519.04.

⁵⁵⁵ OHIO REV. CODE ANN. § 519.04.

⁵⁵⁶ OHIO REV. CODE ANN. § 519.05.

⁵⁵⁷ OHIO REV. CODE ANN. § 519.02.

⁵⁵⁸ OHIO REV. CODE ANN. § 519.05.

⁵⁵⁹ OHIO REV. CODE ANN. § 519.05.

⁵⁶⁰ OHIO REV. CODE ANN. § 519.05.

⁵⁶¹ Pursuant to R.C. § 7.12, a newspaper of general circulation is defined as "a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements: (1) It is printed in the English language using standard printing methods, being not less than eight [8] pages in the broadsheet format or sixteen [16] pages in the tabloid format; (2) It contains at least twenty-five per cent [25%] editorial content, which includes, but is not limited to, local news, political information, and local sports; (3) It has been published continuously for at least three [3] years immediately preceding legal publication by the state agency or political subdivision; (4) The publication has the ability to add subscribers to its distribution list; and (5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States Postal Service 'Statement of Ownership, Management, and Circulation' (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve [12] months immediately preceding legal publication."

⁵⁶² OHIO REV. CODE ANN. § 519.06.

⁵⁶³ OHIO REV. CODE ANN. § 519.06.

4. After holding a public hearing, the BZC must submit the proposed zoning resolution and maps to the county regional planning commission for their “approval, disapproval, or suggestions.”⁵⁶⁴ Approval of the county regional planning commission can be assumed, unless county regional planning states otherwise within twenty (20) days after it received the proposed zoning resolution.⁵⁶⁵
 - *Note: If county regional planning disapproves of or suggests any material change to the proposed zoning resolution, the BZC must hold another public hearing on the resolution.*⁵⁶⁶ *Notice of the hearing must be given by one (1) publication in one (1) or more newspapers of general circulation in the township*⁵⁶⁷. *The publication must occur at least thirty (30) days before the hearing. The published notice must state the place and time at which the text and maps of the proposed zoning plan may be examined.*⁵⁶⁸ *It should also include the date, time, place, and reason for the public hearing.*
5. When the BZC has completed its recommendations, it should certify its recommendation on the proposed zoning (plan) resolution and maps to the board of township trustees.⁵⁶⁹
6. Upon receiving certification of the proposed (plan) resolution and maps from the BZC, the board of township trustees shall hold a public hearing on the proposed resolution.⁵⁷⁰
 - *Notice of the hearing must be given by one (1) publication in one (1) or more newspapers of general circulation in the township*⁵⁷¹. *The publication must occur*

⁵⁶⁴ OHIO REV. CODE ANN. § 519.07.

⁵⁶⁵ OHIO REV. CODE ANN. § 519.07.

⁵⁶⁶ OHIO REV. CODE ANN. § 519.07.

⁵⁶⁷ Pursuant to R.C. § 7.12, a newspaper of general circulation is defined as “a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements: (1) It is printed in the English language using standard printing methods, being not less than eight [8] pages in the broadsheet format or sixteen [16] pages in the tabloid format; (2) It contains at least twenty-five per cent [25%] editorial content, which includes, but is not limited to, local news, political information, and local sports; (3) It has been published continuously for at least three [3] years immediately preceding legal publication by the state agency or political subdivision; (4) The publication has the ability to add subscribers to its distribution list; and (5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States Postal Service ‘Statement of Ownership, Management, and Circulation’ (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve [12] months immediately preceding legal publication.”

⁵⁶⁸ OHIO REV. CODE ANN. §§ 519.06-519.07.

⁵⁶⁹ OHIO REV. CODE ANN. §§ 519.05, 519.07.

⁵⁷⁰ OHIO REV. CODE ANN. § 519.08.

⁵⁷¹ Pursuant to R.C. § 7.12, a newspaper of general circulation is defined as “a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements: (1) It is printed in the English language using standard printing methods, being not less than eight [8] pages in the broadsheet format or sixteen [16] pages in the tabloid format; (2) It contains at least twenty-five per cent [25%] editorial content, which includes, but is not limited to, local news, political information, and local sports; (3) It has been published continuously for at least three [3] years immediately preceding legal publication by the state agency or political subdivision; (4) The publication has the ability to add subscribers to its distribution list; and (5) The publication is circulated generally by United States

*at least thirty (30) days before the hearing. It should also include the date, time, place, and reason for the public hearing.*⁵⁷²

7. The board of township trustees may approve of the proposed (plan) resolution and maps.⁵⁷³ If the board of township trustees seeks to make any changes to the proposed resolution and maps, the proposed resolution and maps along with the changes must be resubmitted to the BZC before the trustees may approve of the plan.⁵⁷⁴
8. The BZC may then approve, disapprove, or make suggestions concerning the changes.⁵⁷⁵ The BZC should then re-certify the proposed (plan) resolution and maps and their comments on the changes to the board of township trustees.
9. The board of township trustees, upon receipt of the re-certified proposed (plan) resolution and maps and BZC recommendations on the changes, shall hold a second public hearing.⁵⁷⁶
 - o *Notice of the hearing must be given by one (1) publication in one (1) or more newspapers of general circulation in the township*⁵⁷⁷. *The publication must occur at least ten (10) days before the hearing. It should also include the date, time, place and reason for the public hearing.*⁵⁷⁸
10. If the BZC approved of the changes, the board of township trustees may approve of the proposed (plan) resolution and maps.⁵⁷⁹ If the BZC disapproved of the changes, the board of township trustees may approve of the proposed (plan) resolution and maps, but only with a favorable *unanimous* vote of the entire membership of the board regarding the provision(s) disapproved by the BZC.⁵⁸⁰

mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States Postal Service ‘Statement of Ownership, Management, and Circulation’ (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve [12] months immediately preceding legal publication.”

⁵⁷² OHIO REV. CODE ANN. § 519.08.

⁵⁷³ OHIO REV. CODE ANN. §§ 519.10-519.11.

⁵⁷⁴ OHIO REV. CODE ANN. § 519.09.

⁵⁷⁵ OHIO REV. CODE ANN. § 519.09.

⁵⁷⁶ OHIO REV. CODE ANN. § 519.09.

⁵⁷⁷ Pursuant to R.C. § 7.12, a newspaper of general circulation is defined as “a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements: (1) It is printed in the English language using standard printing methods, being not less than eight [8] pages in the broadsheet format or sixteen [16] pages in the tabloid format; (2) It contains at least twenty-five per cent [25%] editorial content, which includes, but is not limited to, local news, political information, and local sports; (3) It has been published continuously for at least three [3] years immediately preceding legal publication by the state agency or political subdivision; (4) The publication has the ability to add subscribers to its distribution list; and (5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States Postal Service ‘Statement of Ownership, Management, and Circulation’ (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve [12] months immediately preceding legal publication.”

⁵⁷⁸ OHIO REV. CODE ANN. § 519.09.

⁵⁷⁹ OHIO REV. CODE ANN. §§ 519.10-519.11.

⁵⁸⁰ OHIO REV. CODE ANN. § 519.09.

11. After approval by the board of township trustees, the “question of whether or not the proposed plan of zoning [resolution and maps] shall be put into effect” shall be placed on the ballot and submitted for approval or rejection at the next primary or general election by the voters of the unincorporated territory of the township included in the proposed plan of zoning.⁵⁸¹ A special election may also be called for this purpose.⁵⁸² The resolution must be filed with the board of elections no later than 4:00 p.m. of the ninetieth (90th) day before the election.⁵⁸³ The zoning resolution will be effective immediately if approved by a majority of the voters.⁵⁸⁴

12. Within five (5) business days after the date the resolution becomes effective, the board of trustees shall file the resolution and maps in the office of the county recorder.⁵⁸⁵ Also, within five (5) business days after the date the resolution becomes effective, the board of trustees shall file the resolution and maps with the county regional planning commission.⁵⁸⁶

Amendments to the Zoning Resolution

Amendments to a township zoning resolution should be proposed and added according to R.C. § 519.12. The flowchart on the next two pages is a diagram of the procedure in R.C. § 519.12 for amending a zoning resolution.⁵⁸⁷

⁵⁸¹ OHIO REV. CODE ANN. § 519.11.

⁵⁸² OHIO REV. CODE ANN. § 519.11.

⁵⁸³ OHIO REV. CODE ANN. § 519.11.

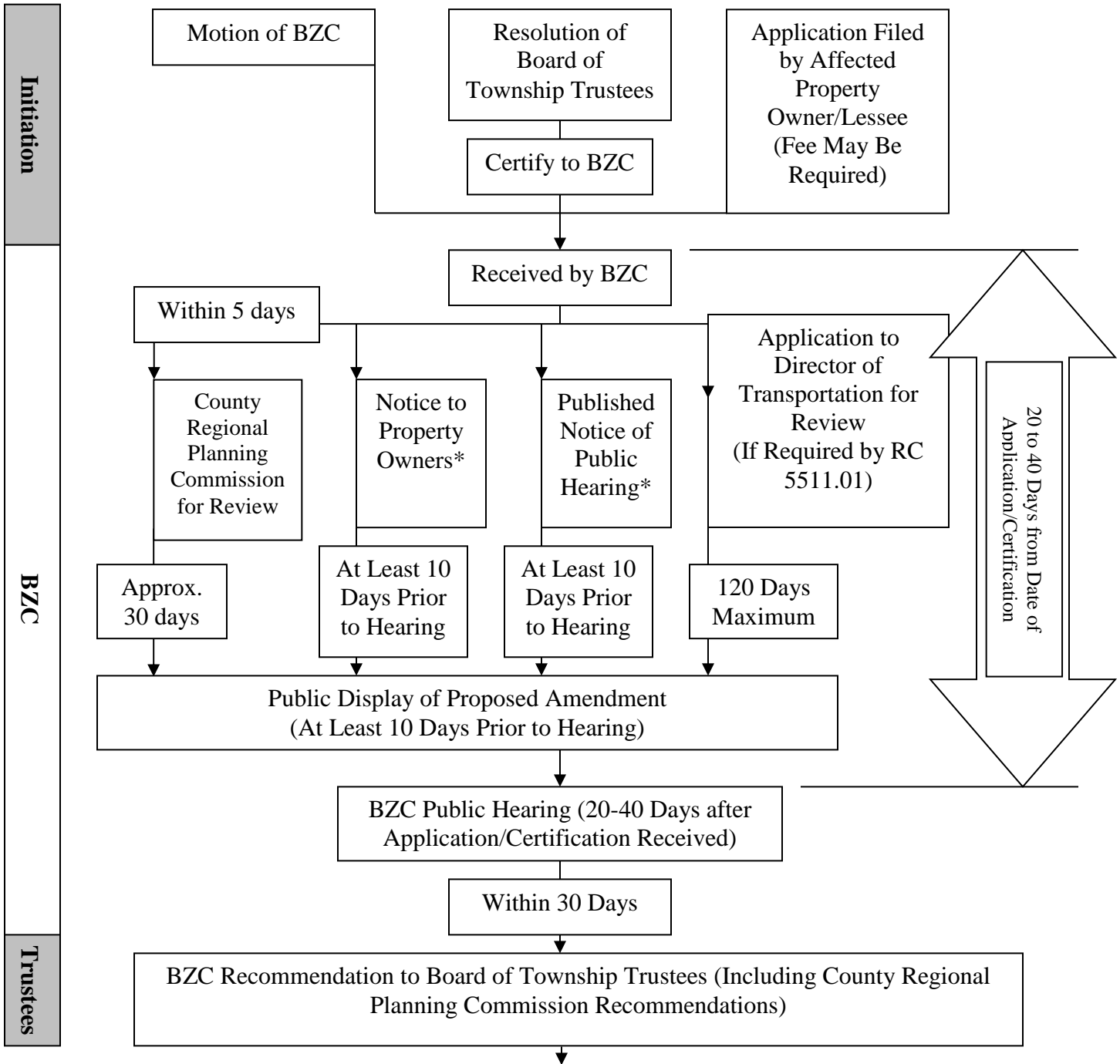
⁵⁸⁴ OHIO REV. CODE ANN. § 519.11.

⁵⁸⁵ OHIO REV. CODE ANN. § 519.11.

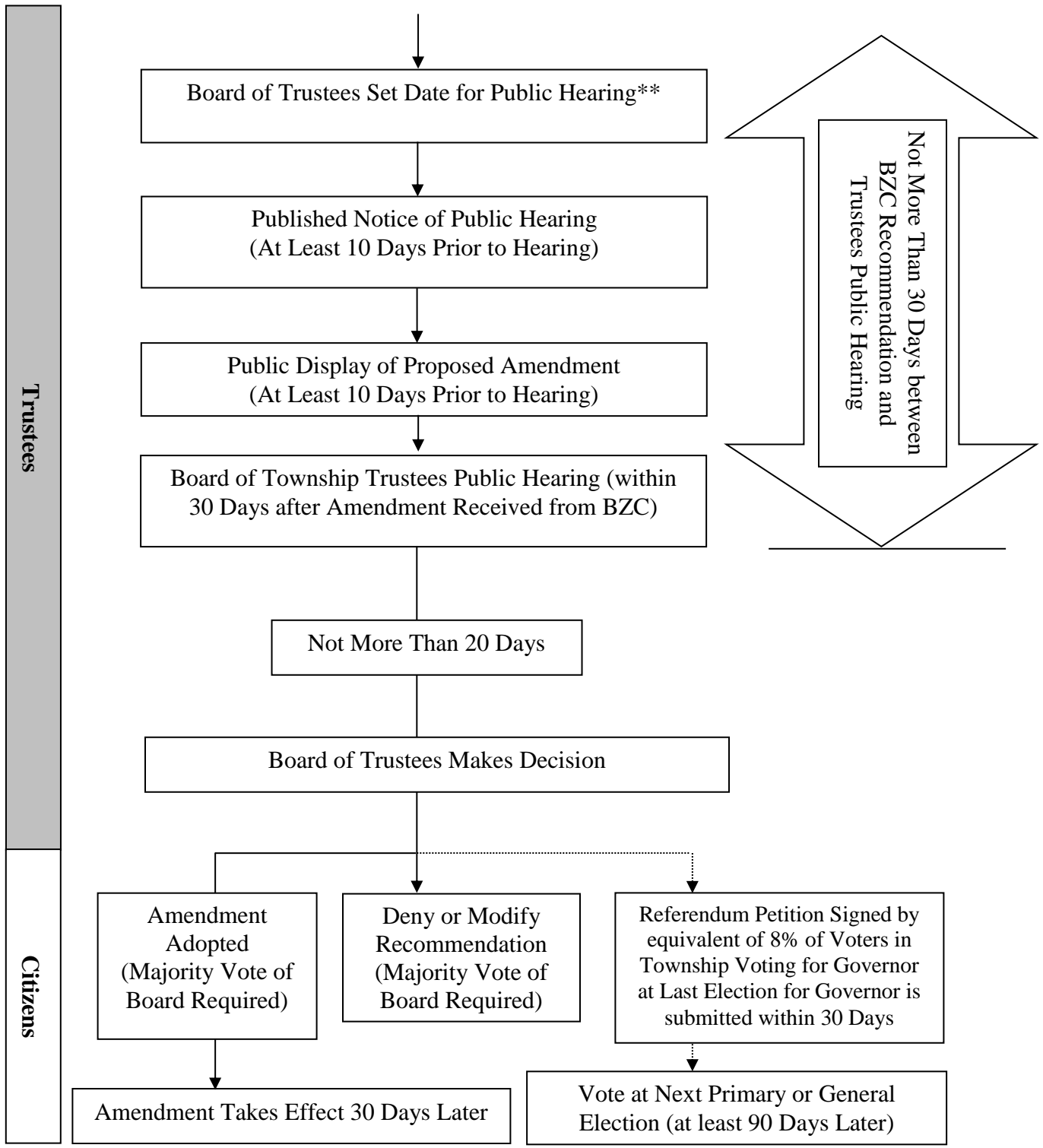
⁵⁸⁶ OHIO REV. CODE ANN. § 519.11.

⁵⁸⁷ OHIO REV. CODE ANN. § 519.12.

ZONING CHANGE/AMENDMENT FLOWCHART – R.C. § 519.12



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



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

Additional Notice Requirements (BZC Hearing)

Besides specifying the time, date, and place of a BZC hearing during which a zoning amendment will be considered, R.C. §§ 519.12(C)-(D) mandate that notices must include additional information.

If the proposed amendment seeks to rezone ten (10) or fewer parcels of land, the published and mailed notices (notices are to be mailed by first class mail to owners and/or neighbors of the affected parcels (within and continuous to and directly across the street from such area proposed to be rezoned)) must contain the following information (in addition to the time, date, and place of the BZC hearing during which the zoning amendment will be considered):

1. The name of the BZC that will conduct the 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 the properties to be rezoned by the proposed amendment and the names of the owners of the properties (as they appear on the county auditor's current tax list);
4. The current zoning classification of the property named in the amendment and the proposed zoning classification of that property;
5. The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for at least ten (10) days prior to the public hearing;
6. The name of the person responsible for giving notice of the public hearing (by mail and by publication);
7. A statement that the matter will be submitted to the board of township trustees after the conclusion of the hearing; and,
8. Any other information requested by the BZC.⁵⁸⁸

If the proposed amendment alters the text of the zoning resolution or seeks to rezone more than ten (10) parcels of land, the notice need only be published and must contain the following (again, in addition to the time, date, and place of a BZC hearing during which the zoning amendment will be considered):

1. The name of the BZC that will conduct the hearing;
2. A statement indicating that the motion, resolution, or application 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 at least ten (10) 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 the matter will be submitted to the board of township trustees after the conclusion of the hearing; and,
6. Any other information requested by the BZC.⁵⁸⁹

⁵⁸⁸ OHIO REV. CODE ANN. § 519.12(C).

⁵⁸⁹ OHIO REV. CODE ANN. § 519.12(D).

Additional Notice Requirements (Board of Trustees Hearing)

Similarly, once a BZC makes its recommendation on a proposed amendment and submits it to the board of trustees for consideration, R.C. §§ 519.12(F) and 519.12(G) mandate that the board of trustees, besides specifying the time, date, and place of the hearing during which a zoning amendment will be considered, include additional information in its published notice. Again, the content of the notice depends upon the number of parcels affected by the proposed zoning amendment. Such notices need only be published.

If the proposed amendment seeks to rezone ten (10) or fewer parcels of land, the published notice, in addition to specifying the time, date, and place of the hearing during which the amendment will be considered, must contain the following:

1. The name of the board of trustees that will conduct the 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 the properties to be rezoned by the proposed amendment and the names of the owners of the properties (as they appear on the county auditor's current tax list);
4. The current zoning classification of the property named in the amendment and the proposed zoning classification of that property;
5. The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for at least ten (10) days prior to the public hearing;
6. The name of the person responsible for giving notice of the public hearing (by mail and by publication); and,
7. Any other information requested by the board.⁵⁹⁰

If the proposed amendment alters the text of the zoning resolution or seeks to rezone more than ten (10) parcels of land, the published notice, in addition to specifying the time, date, and place of the hearing during which the amendment will be considered, must contain the following:

1. The name of the board of trustees that will conduct the hearing;
2. A statement indicating that the motion, resolution, or application 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 at least ten (10) days prior to the public hearing;
4. The name of the person responsible for giving notice of the public hearing by publication; and,
5. Any other information requested by the board.⁵⁹¹

To make preparation of notices easier, checklists containing the above notice requirements are contained in the Sample Forms chapter of this manual.

⁵⁹⁰ OHIO REV. CODE ANN. § 519.12(F).

⁵⁹¹ OHIO REV. CODE ANN. § 519.12(G).

Appropriate Considerations for Reviewing Resolutions/Amendments

When drafting or preparing a zoning resolution or a text amendment to a zoning resolution, the purposes for which a township can zone must be considered. Specifically, such purposes include the following:

A township, “in the interest of the public health and safety,” by resolution, in accordance with a comprehensive plan, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- location,
- height,
- bulk,
- number of stories, and
- size of buildings and other structures.

Lots or Parcels:

- percentages of lot areas which may be occupied,
- set back building lines,
- sizes of yards, courts, and other open spaces,
- the density of population.

Uses:

- the uses of buildings and other structures including tents, cabins, and trailer coaches, and
- the uses of land for trade, industry, residence, recreation, or other purposes.⁵⁹²

A township, “in the interest of the public convenience, comfort, prosperity, or general welfare,” by resolution, in accordance with a comprehensive plan, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- Location
- Setback lines.

Uses:

- Uses of buildings and other structures (including tents, cabins, and trailer coaches).
- Uses of land for trade, industry, residence, recreation, or other purposes.

Landscaping and Architectural Standards:

- Reasonable landscaping standards and architectural standards excluding exterior building materials.⁵⁹³

⁵⁹² OHIO REV. CODE ANN. § 519.02.

⁵⁹³ OHIO REV. CODE ANN. § 519.02.

A township, “in the interest of the public convenience, comfort, prosperity, or general welfare,” by resolution and in accordance with a comprehensive plan, *for non-residential property only*, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- Height
- Bulk
- Number of stories
- Size of buildings and other structures.

Lots or Parcels:

- Percentages of lot areas that may be occupied
- Sizes of yards, courts, and other open spaces
- Density of population⁵⁹⁴

Note that the Ohio Revised Code differentiates among the various interests of the public in allowing for the regulation of residential and non-residential property through zoning. The interests listed above must correlate with the type of property sought to be regulated by zoning.

Vote of the Board of Trustees on Recommendations of the BZC

According to R.C. § 519.12, the township board of trustees shall, within twenty days after the public hearing, “either adopt or deny the recommendations of the zoning commission or adopt some modification of them.”⁵⁹⁵ In the event “the board denies or modifies the commission’s recommendations, a majority vote of the board shall be required.”⁵⁹⁶

Referendum

If, within thirty (30) days after the adoption of the amendment, the board of township trustees is presented a petition for a referendum, the zoning amendment shall be certified to the board of elections and put to a vote.⁵⁹⁷ This petition must be signed by registered electors residing in the unincorporated area of the township equal to eight-percent (8%) of the total vote cast for all candidates for governor in the township at the most recent general election at which a governor was elected.⁵⁹⁸ The special election for approval or rejection of the amendment must be held “on the day of the next primary or general election that occurs at least ninety [90] days after the petition is filed.”⁵⁹⁹

⁵⁹⁴ OHIO REV. CODE ANN. § 519.02.

⁵⁹⁵ OHIO REV. CODE ANN. § 519.12(H).

⁵⁹⁶ OHIO REV. CODE ANN. § 519.12(H).

⁵⁹⁷ OHIO REV. CODE ANN. § 519.12(H).

⁵⁹⁸ OHIO REV. CODE ANN. § 519.12(H).

⁵⁹⁹ OHIO REV. CODE ANN. § 519.12(H).

Before certifying the petitions to the board of elections and in accordance with R.C. § 519.12(H), the board of trustees must determine, by resolution adopted at an open meeting, that the petition is valid on its face.⁶⁰⁰ Pursuant to R.C. § 519.12(H) and consistent with the interpretations of this law by Ohio courts and the Ohio Attorney General, a board of trustees has the “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”.⁶⁰¹

Thus, the board of trustees has the responsibility to determine the sufficiency of the petitions on their face, such that they should or should not be presented to the board of elections.⁶⁰²

This duty of the board of trustees is limited. The board of trustees “does not have the power to inquire into other matters” other than what is apparent from the face of the petitions.⁶⁰³

The process for determining validity generally involves the board of trustees satisfying itself that a petition is in the proper form and that it contains the requisite number of signatures.⁶⁰⁴ In terms of the form of the petition, each part of the 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.”⁶⁰⁵ It should also include an appropriate map of the area affected by the zoning.⁶⁰⁶

In terms of the number of signatures, the board of trustees will determine if the petition contains at least a number of signatures equal to eight-percent (8%) of the total vote cast for all candidates for governor in the township at the last preceding general election at which a governor was elected.⁶⁰⁷ This number is available from the board of elections. Note that it is the responsibility of the board of elections to determine if the signatures are valid.⁶⁰⁸

It will be necessary for the board of trustees to determine the validity of the petitions in an open public meeting. A resolution should be approved either finding the petitions valid on their face and certifying the petitions to the board of elections or finding the petitions invalid on their face and rejecting certification to the board of elections. A form resolution for this purpose is available from the Delaware County Prosecuting Attorney’s Office. Any certification to the board of elections shall occur within two (2) weeks of receipt of the referendum petition and not less than ninety (90) days prior to the election at which the question is to be voted upon.⁶⁰⁹

⁶⁰⁰ OHIO REV. CODE ANN. § 519.12(H); 1971 Ohio Op. Att’y Gen. No. 71-052.

⁶⁰¹ 1971 Ohio Op. Att’y Gen. No. 71-052.

⁶⁰² 1971 Ohio Op. Att’y Gen. No. 71-052.

⁶⁰³ 1971 Ohio Op. Att’y Gen. No. 71-052.

⁶⁰⁴ 1971 Ohio Op. Att’y Gen. No. 71-052 (citing *State ex rel. v. Lauderbaugh*, 77 Ohio L. Abs. 93, 96, 149 N.E.2d 33, 35 (1957)).

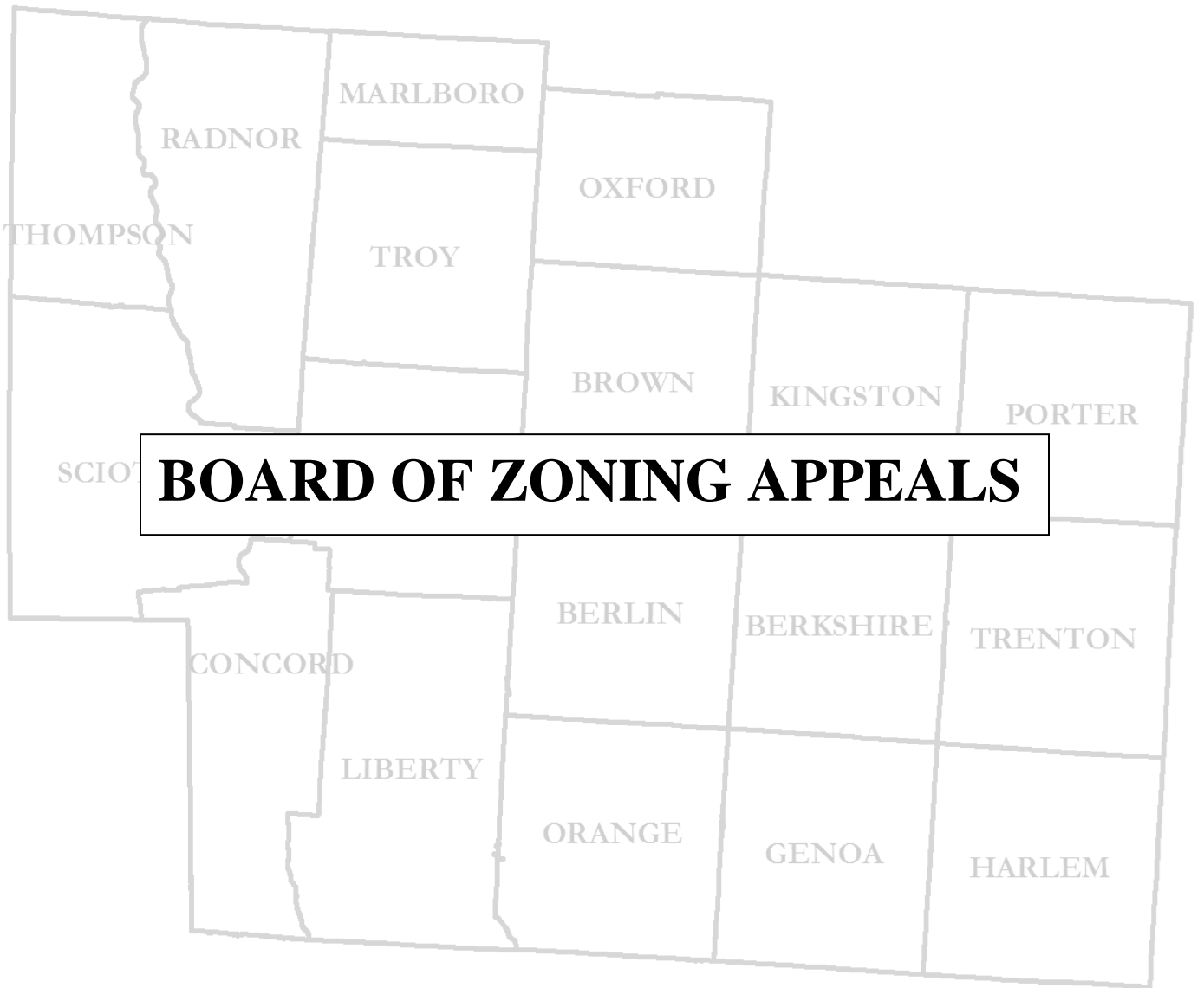
⁶⁰⁵ OHIO REV. CODE ANN. § 519.12(H).

⁶⁰⁶ OHIO REV. CODE ANN. § 519.12(H).

⁶⁰⁷ OHIO REV. CODE ANN. § 519.12(H).

⁶⁰⁸ 1971 Ohio Op. Att’y Gen. 71-052 (citing *Fried v. Augspurger*, 83 Ohio L. Abs. 321, 164 N.E.2d 466, 468 (1959)).

⁶⁰⁹ OHIO REV. CODE ANN. § 519.12(H).



BOARD OF ZONING APPEALS

General Overview and Term of Office

In any township that has adopted zoning, the board of township trustees must appoint a township board of zoning appeals,⁶¹⁰ or “BZA.” The BZA must consist of five (5) members who are required to live in the unincorporated territory of the township.⁶¹¹ Each member of the BZA is appointed for a term “of such length and so arranged that the term of one member will expire each year.”⁶¹² He or she shall serve until a successor is appointed and qualified.⁶¹³

Also, the board of trustees may appoint two alternate members to the BZA for terms to be determined by the board of trustees.⁶¹⁴ To be appointed, alternate members must meet the same eligibility requirements as regular members.⁶¹⁵ Alternate members may serve in place of a regular member at any BZA meeting/hearing.⁶¹⁶ The board of trustees shall prescribe, in a resolution appointing alternate BZA members, the procedure by which an alternate BZA member may serve at BZA meetings.⁶¹⁷ When replacing a regular BZA member at a BZA meeting/hearing, an alternate BZA member may vote upon anything that the regular BZA member they replace would be eligible to vote upon.⁶¹⁸ Like regular members, alternate BZA members shall serve until their successor is appointed and qualified.⁶¹⁹

BZA members may be expelled from their positions for the same reasons for which members of the board of zoning commission (BZC) can be removed from their positions. These reasons can be found in R.C. § 519.04. Pursuant to that section, members can be expelled from the BZA for nonperformance of duty, misconduct in office, or for cause by the board of trustees.⁶²⁰ Under such circumstances, written charges must be filed with the board of trustees and served on the BZA member in accordance with R.C. § 519.04.⁶²¹ The BZA member must be given a public hearing on the charges.⁶²²

In filling a vacancy on the BZA, the trustees appoint a new BZA member to serve out the remainder of the departed BZA member’s term.⁶²³

To assist in their duties and responsibilities, the BZA, “within the limits of the moneys appropriated by the board of township trustees for the purpose, [may] employ such executive, professional, technical, and other assistants as it considers necessary.”⁶²⁴

⁶¹⁰ OHIO REV. CODE ANN. § 519.13.

⁶¹¹ OHIO REV. CODE ANN. § 519.13.

⁶¹² OHIO REV. CODE ANN. § 519.13.

⁶¹³ OHIO REV. CODE ANN. § 519.13.

⁶¹⁴ OHIO REV. CODE ANN. § 519.13.

⁶¹⁵ OHIO REV. CODE ANN. § 519.13.

⁶¹⁶ OHIO REV. CODE ANN. § 519.13.

⁶¹⁷ OHIO REV. CODE ANN. § 519.13.

⁶¹⁸ OHIO REV. CODE ANN. § 519.13.

⁶¹⁹ OHIO REV. CODE ANN. § 519.13.

⁶²⁰ OHIO REV. CODE ANN. § 519.04.

⁶²¹ OHIO REV. CODE ANN. § 519.04.

⁶²² OHIO REV. CODE ANN. § 519.04.

⁶²³ OHIO REV. CODE ANN. § 519.04.

⁶²⁴ OHIO REV. CODE ANN. § 519.13.

Compensation

BZA members “may be allowed their expenses, or such compensation, or both, as the board of township trustees may approve and provide.”⁶²⁵

Powers and Duties

By statute, the BZA generally is given authority to do four (4) things. According to R.C. §§ 519.14(A)-(D), they include the following:

- A. **Hear and decide appeals where it is alleged there is an error** in any order, requirement, decision, or determination made by an administrative official in the enforcement of R.C. §§ 519.02 to 519.25, 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.⁶²⁶

Specific statutory procedures must be followed if the BZA intends to revoke a variance of a conditional zoning certificate pursuant to R.C. § 519.14(D) as set forth above.⁶²⁷ This includes notifying the holder of the variance or certificate by certified mail of both the BZA’s intent to revoke and the holder’s right to a hearing before the BZA within thirty (30) days of the notice’s mailing, if the holder so desires.⁶²⁸

Note that a gathering of BZA members to exercise their authority pursuant to R.C. § 519.14 is a quasi-judicial proceeding.⁶²⁹ As such, a recording should be made of the BZA hearings so that a record exists in the event that the BZA’s decision is appealed to the court of common pleas. Often, such recording consists of having a court reporter present to take down a verbatim transcript of the hearing.

⁶²⁵ OHIO REV. CODE ANN. § 519.13.

⁶²⁶ OHIO REV. CODE ANN. § 519.14(A)-519.14(D) (emphasis added).

⁶²⁷ See OHIO REV. CODE ANN. § 519.14.

⁶²⁸ OHIO REV. CODE ANN. § 519.14.

⁶²⁹ 2000 Ohio Op. Att’y Gen. No. 2000-035.

In exercising its authority pursuant to R.C. § 519.14(A)-(D), the BZA

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.⁶³⁰

Thus, the decision of the BZA may take the form of a reversal, affirmation, or modification of an administrative official's decision concerning the enforcement of sections R.C. §§ 519.02-519.25.⁶³¹ In addition, the BZA is granted authority to make the "order, requirement, decision, or determination" that "ought to be made".⁶³² This provision allows the BZA to make a decision on alternative grounds, based on the evidence available. However, this decision-making authority does not extend to determining the constitutionality of the zoning resolution or a regulation contained therein.⁶³³

Variances

A variance is a "minor departure or exception from the strict rule or literal enforcement or interpretation of zoning provisions."⁶³⁴ It is intended to allow slight deviations from the zoning resolution as applied on an individual or case-by-case basis.⁶³⁵ A variance is related to an individual hardship that is or will be suffered on particular property without a deviation from the strict provisions of the zoning resolution.⁶³⁶

Variations are not substitutes for rezoning; they "are to be granted for problems related to particular parcels."⁶³⁷ In other words, if changing the zoning designation of the property can alleviate the hardship experienced on a particular piece of property, rezoning the property is the more appropriate avenue for the property owner to pursue.

There are two types of variations: "area or bulk variations" and "use variations."

Generally, an area or bulk variance does not alter the character of the surrounding neighborhood and concerns the technical measurements required by zoning, such as "departures from yard and

⁶³⁰ OHIO REV. CODE ANN. § 519.14.

⁶³¹ PLANNING AND ZONING LAW, *supra* note 335, at § 9:16.

⁶³² OHIO REV. CODE ANN. § 519.14.

⁶³³ *FRC of Kamms Corner, Inc. v. Cleveland Bd. of Zoning Appeals*, 14 Ohio App.3d 372, 373, 471 N.E.2d 845, 847 (8th Dist. 1984); *Northampton Bldg. Co. v. Sharon Twp. Bd. Of Zoning Appeals*, 109 Ohio App.3d 193, 202, 671 N.E.2d 1309, 1315 (9th Dist. 1996).

⁶³⁴ PLANNING AND ZONING LAW, *supra* note 335, at § 9:1.

⁶³⁵ PLANNING AND ZONING LAW, *supra* note 335, at § 9:1.

⁶³⁶ PLANNING AND ZONING LAW, *supra* note 335, at § 9:1.

⁶³⁷ PLANNING AND ZONING LAW, *supra* note 335, at § 9:1 (citing *Perrico Property Sys. v. Independence*, 96 Ohio App.3d 134, 141-42, 644 N.E.2d 714, 719 (8th Dist. 1994)).

height requirements.”⁶³⁸ Usually, area or bulk variances include parking and sign code regulations.⁶³⁹ Setbacks are often the subject of an area variance.

The standard for granting an area variance is whether the owner has encountered “practical difficulties.”⁶⁴⁰ According to the Supreme Court of Ohio in *Duncan v. Village of Middlefield*, the factors to be considered when considering an area variance under the practical difficulties standard include but are not limited to the following:

- 1) Whether the property in question will yield a reasonable return or whether there can be a beneficial use of the property without the variance;
- 2) Whether the variance is substantial;
- 3) Whether the essential character of the neighborhood would be substantially altered or 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 knowledge of the zoning restriction;
- 6) Whether the property owner’s predicament feasibly can be obviated through some method other than a variance;
- 7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.⁶⁴¹

Use variances, on the other hand, typically concern the actual use of the property and “authorize uses not expressly or impliedly permitted by the zoning code.”⁶⁴² Generally, the standard to be applied for granting a use variance is whether the owner would suffer “unnecessary hardship.”⁶⁴³

Though self-imposed hardship is often fatal to the granting of a use variance, it is not necessarily fatal to an area variance. With an area variance, the fact that the hardship was self-imposed should be considered, along with the above seven factors from the *Duncan* case.⁶⁴⁴

⁶³⁸ PLANNING AND ZONING LAW, *supra* note 335, at § 9:1.

⁶³⁹ PLANNING AND ZONING LAW, *supra* note 335, at § 9:1.

⁶⁴⁰ *Kisil v. City of Sandusky*, 12 Ohio St.3d 30, 465 N.E.2d 848 (1984), cited in *Flynn v. Boardman Twp. Bd. of Zoning Appeals*, 110 Ohio App. 3d 149, 152, 673 N.E. 2d 928, 930 (7th Dist. 1995) (finding that “the...standard of unnecessary hardship should...be used in regard to requests for use variances”); *Duncan v. Vill. of Middlefield*, 23 Ohio St.3d 83, 491 N.E.2d 692, 693 (1986) (finding that area zoning variances are subject to the practical difficulties standard).

⁶⁴¹ *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83, 491 N.E.2d 692, 693 (1986). *See also Briggs v. Dinsmore Twp. Bd. of Zoning Appeals*, 161 Ohio App.3d 704, 709, 831 N.E.2d 1063, 1066 (3rd Dist. 2005) (affirming the standard set forth in *Duncan*).

⁶⁴² PLANNING AND ZONING LAW, *supra* note 335, at § 9:1.

⁶⁴³ *Kisil v. City of Sandusky*, 12 Ohio St.3d 30, 465 N.E.2d 848 (1984), cited in *Flynn v. Boardman Twp. Bd. of Zoning Appeals*, 110 Ohio App. 3d 149, 152, 673 N.E. 2d 928, 930 (7th Dist. 1995) (finding that “the...standard of unnecessary hardship should...be used in regard to requests for use variances”); *Duncan v. Vill. of Middlefield*, 23 Ohio St.3d 83, 491 N.E.2d 692, 693 (1986) (finding that area zoning variances are subject to the practical difficulties standard).

⁶⁴⁴ *Kandell v. City Council of Kent, Ohio*, 11th Dist. Portage No. 90-P-2255, 1991 WL 147448, *6 (Aug. 2, 1991).

Conditional Use

A conditional use differs from a variance. Unlike a variance, which requests a deviation from the provisions of the zoning resolution, a conditional use (or special exception) is a legitimate use of property pursuant to the terms of the zoning resolution, yet the use may have a significant impact upon the zoned property. Therefore, certain prescribed conditions must be met before the use will be allowed.⁶⁴⁵ These conditions, which distinguish a permitted use (a use expressly permitted by the zoning resolution) from a conditional use, are set forth within the zoning code.

In issuing a conditional zoning certificate, a BZA is governed by the terms and conditions of the zoning resolution itself.⁶⁴⁶ Thus, “[t]he standards for granting or denying each use will differ from ordinance to ordinance.”⁶⁴⁷ It remains the responsibility of the BZA to interpret and apply the standards in the resolution.⁶⁴⁸

Procedures

The township zoning resolution often provides rules and regulations pertaining to the BZA. The BZA, in accordance with these rules and regulations, can organize and adopt rules.⁶⁴⁹

BZA meetings/hearings are called by the chairperson, and at such other times as the board determines appropriate, and shall be open to the public.⁶⁵⁰ The BZA must have a majority (quorum) of its membership present in order to conduct a meeting/hearing and act. Some zoning resolutions require a majority of the BZA members to vote in order to act, refer to your township’s zoning resolution for more information. The chair, and if the chairperson is absent the acting chairperson, may administer oaths.⁶⁵¹ The BZA may compel the attendance of witnesses.⁶⁵² Minutes of BZA hearings shall be kept by the BZA secretary or clerk and shall include the vote of each member upon each question.⁶⁵³ In addition to minutes, a court reporter is generally present to take a verbatim transcript of the proceedings. If a member is either not present or fails to vote, the minutes should note this fact.⁶⁵⁴ The BZA should keep “records of its examinations and other official actions, all of which shall be immediately filed in the office of the board of trustees and be a public record.”⁶⁵⁵

⁶⁴⁵ PLANNING AND ZONING LAW, *supra* note 335, at §§ 9:2, 9:11.

⁶⁴⁶ PLANNING AND ZONING LAW, *supra* note 335, at § 9:12 (citing *Nunamaker v. Bd. of Zoning Appeals of Jerusalem Twp.*, 2 Ohio St.3d 115, 118 443 N.E.2d 172, 175 (1982)).

⁶⁴⁷ PLANNING AND ZONING LAW, *supra* note 335, at § 9:12.

⁶⁴⁸ PLANNING AND ZONING LAW, *supra* note 335, at § 9:12.

⁶⁴⁹ OHIO REV. CODE ANN. § 519.15.

⁶⁵⁰ OHIO REV. CODE ANN. § 519.15.

⁶⁵¹ OHIO REV. CODE ANN. § 519.15.

⁶⁵² OHIO REV. CODE ANN. § 519.15.

⁶⁵³ OHIO REV. CODE ANN. § 519.15.

⁶⁵⁴ OHIO REV. CODE ANN. § 519.15.

⁶⁵⁵ OHIO REV. CODE ANN. § 519.15.

Procedure for Appeal of Decision of Administrative Official

“[A]ny person aggrieved or...any officer of the township affected by any decision of the administrative officer” may appeal to the BZA.⁶⁵⁶ Such appeals must be taken within twenty (20) days following the decision that is the reason for the appeal.⁶⁵⁷ The filing must include a notice of appeal and state the grounds for the appeal. It must be filed with the officer from whom the appeal is taken and with the BZA.⁶⁵⁸ After the filing of the notice of appeal, the officer whose decision is being appealed shall immediately send all documents pertaining to the decision to the BZA.⁶⁵⁹

The BZA shall then “fix a reasonable time for the public hearing of the appeal.”⁶⁶⁰ Each interested party shall receive ten (10) days’ notice in writing of the public hearing.⁶⁶¹ Notice of the hearing shall also be published once in one or more newspapers of general circulation⁶⁶² in the county at least ten (10) days prior to the hearing.⁶⁶³ Parties may represent themselves at the hearing or be represented by an attorney.⁶⁶⁴

Following the hearing, the BZA shall render a written decision and its findings of fact and conclusions within a “reasonable time” after the appeal has been submitted to the board.⁶⁶⁵ Such a written decision and findings of fact and conclusions shall be delivered to each of the parties to the appeal.

Decision

The BZA should issue a written decision and its findings of fact and conclusions. Such a written decision and findings of fact and conclusions shall be delivered to each of the parties to the appeal.

⁶⁵⁶ OHIO REV. CODE ANN. § 519.15.

⁶⁵⁷ OHIO REV. CODE ANN. § 519.15.

⁶⁵⁸ OHIO REV. CODE ANN. § 519.15.

⁶⁵⁹ OHIO REV. CODE ANN. § 519.15.

⁶⁶⁰ OHIO REV. CODE ANN. § 519.15.

⁶⁶¹ OHIO REV. CODE ANN. § 519.15.

⁶⁶² Pursuant to R.C. § 7.12, a newspaper of general circulation is defined as “a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements: (1) It is printed in the English language using standard printing methods, being not less than eight [8] pages in the broadsheet format or sixteen [16] pages in the tabloid format; (2) It contains at least twenty-five per cent [25%] editorial content, which includes, but is not limited to, local news, political information, and local sports; (3) It has been published continuously for at least three [3] years immediately preceding legal publication by the state agency or political subdivision; (4) The publication has the ability to add subscribers to its distribution list; and (5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States postal service ‘Statement of Ownership, Management, and Circulation’ (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve [12] months immediately preceding legal publication.”

⁶⁶³ OHIO REV. CODE ANN. § 519.15.

⁶⁶⁴ OHIO REV. CODE ANN. § 519.15.

⁶⁶⁵ OHIO REV. CODE ANN. § 519.15.

Appeal From BZA Decision

If a party is aggrieved by the decision of the BZA, the BZA's decision may be appealed to the Court of Common Pleas.⁶⁶⁶

⁶⁶⁶ See OHIO REV. CODE ANN CH. 2506.