

# Article 3: Review Procedures

## 3.01 PURPOSE

The purpose of this article is to identify the review procedures used in the administration of this zoning resolution.

## 3.02 EXEMPTIONS

### (A) Agricultural Use Exemption (Section 6.03)

- (1) Agricultural uses, and buildings or structures that are incidental to agricultural uses, as defined in the ORC, located on lots with a lot area greater than five acres shall be exempt from the requirements of this zoning resolution pursuant to the ORC.
- (2) Buildings or structures that are incidental to the use of land for agricultural uses, as defined in the ORC, located on lots with a lot area greater than one acre but not greater than five acres, shall be subject to all setbacks, maximum building size, and maximum height requirements of the applicable zoning district as allowed by the ORC.
- (3) All agricultural uses, as defined by the ORC, are prohibited on lots with a lot area of one acre or less except for the raising of fruits, vegetables, grains, trees, and other crops for personal use of the property owners or residents. Such uses shall be permitted on all lots, in all yards.
- (4) Dairying and animal and poultry husbandry shall be regulated as follows:
  - (a) The use shall be exempt from zoning on lots with a lot area greater than five acres.
  - (b) The use shall be prohibited on lots with a lot area of one acre or less.
  - (c) The use shall be allowed on lots with a lot area greater than one acre but not greater than five acres, subject to the minimum setback and maximum height requirements of the applicable zoning district, when at least thirty-five percent 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 and mobile homes under section 4503.06 of the Revised Code. After thirty-five percent of the lots are so developed, dairying and animal and poultry husbandry shall be considered a nonconforming use of land and buildings or structures subject to the nonconforming rules of this resolution.
- (5) Structures that are exempt from the provisions of this zoning resolution pursuant to this section may not be exempt from any applicable building or special flood hazard area regulations established and enforced by Butler County.

### (B) Energy and Gas Exemptions

The following shall be exempt from the requirements of this resolution in accordance with the ORC:

- (1) Biodiesel production, biomass energy production, or electric or heat energy production if the land on which the production facility is located qualifies as land devoted exclusively to agricultural use under sections [5713.30](#) to [5713.37](#) of the ORC for real property tax purposes. "Biodiesel," "biomass energy," and "electric or heat energy" have the same meanings as in Section [5713.30](#) of the ORC.
- (2) Biologically derived methane gas production if the land on which the production facility is located qualifies as land devoted exclusively to agricultural use under sections [5713.30](#) to [5713.37](#) of the ORC for real property tax purposes and if the facility that produces the biologically derived methane gas does not produce more than seventeen million sixty thousand seven hundred ten British thermal units, five megawatts, or both.

**(C) Public Utility or Railroad Exemption**

Public utilities and railroads, as defined by the ORC, shall be exempt from the provisions of this zoning resolution.

**3.03 COMMON REVIEW REQUIREMENTS**

The requirements of this section shall apply to all development review applications and procedures subject to review under this zoning resolution, unless otherwise stated.

**(A) Authority to File Applications**

- (1) The person having legal authority to take action in accordance with the approval sought shall file an application for any review in accordance with this zoning resolution. The person having legal authority shall be the recorded property owner, lessee, or the duly authorized agent of the recorded property owner and may be required to provide written proof of such authority at the time of application.
- (2) The Zoning Commission and Board of Trustees may initiate zoning text and map amendments under this zoning resolution with or without an application from the property owner who may be affected.

**(B) Application Contents (Section 25.21)**

**(1) Submittal Requirements**

- (a) Applications required under this zoning resolution shall be submitted in a form and in such numbers as established by the township and made available to the public.
- (b) The Board of Trustees shall adopt the submittal requirements at a regular board meeting after hearing recommendations on the requirements from the Zoning Commission.
- (c) The applicant shall attest to the truth and correctness of all facts and information presented with the application.

**(2) Submission of Fees (Section 25.4)**

- (a) Applications shall be accompanied by a fee as established by resolution of the Board of Trustees.
- (b) The township shall charge appropriate fees for the review or issuance of zoning certificates, conditional use approvals, appeals, variances, zoning amendments, nonconformity reviews, and other applicable permits to cover the costs of inspection, investigation, legal notices and other expenses incidental to the enforcement of this zoning resolution. Such fees shall be paid to the Ross Township Board of Trustees, or its designee, and shall be paid in accordance with the official zoning fee schedule as established by the Board of Trustees.
- (c) Fees are waived for the construction or reconstruction of a structure destroyed by fire or an act of God. The zoning certificate application shall be made within one year of the disaster and shall only allow for the reconstruction of the uses, buildings, and structures, as existed prior to the disaster and with any approved plans or other approvals.

**(3) Complete Application Determination**

- (a) The Zoning Inspector shall only initiate the review and processing of applications submitted under this article if such application is determined to be complete.
- (b) The Zoning Inspector shall make a determination of application completeness within a reasonable time.

- (c) If the application is determined to be complete, the application shall then be processed according to the procedures set forth in this resolution.
- (d) If an application is determined to be incomplete, the Zoning Inspector shall provide written notice to the applicant along with an explanation of the application's deficiencies. If the missing components are minor in nature, the Zoning Inspector may process the application with a note that to the applicable board. No further processing of all other incomplete application shall occur until the deficiencies are corrected.
- (e) If the applicant fails to re-submit a complete application within 60 days of the notice provided by the Zoning Inspector pursuant to Paragraph (d) above, the incomplete application shall not be reviewed, the applicant's original filing fee shall be forfeited, and the incomplete application shall be deemed withdrawn. No reconsideration of an incomplete application shall occur after expiration of the 60-day period and an applicant in need of further development approval under the zoning resolution shall, pursuant to all of the original requirements of Section [3.03\(B\): Application Contents](#), submit a new application and filing fee.
- (f) If any substantive false or misleading information is submitted or supplied by an applicant on an application, that application shall be rejected.

**(4) Refund of Fees**

Application or review fees are not refundable except where the Zoning Inspector determines that an application was accepted in error, or the fee paid exceeds the amount due, in which case the amount of the overpayment will be refunded to the applicant within 60 days.

**(5) Submission Schedule**

The Zoning Inspector is authorized and shall establish the submission and review schedule (including time frames for review where not established within the ORC) for applications. The Zoning Inspector may amend and update these requirements as determined to be necessary.

**(C) Examination and Copying of Application and Other Documents**

Documents and/or records may be inspected and/or copied as provided for by state law.

**(D) Constructive Notice for All Proceedings**

The following shall apply to all public notice requirements, regardless of decision-making body.

- (1) Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Minor defects in notice shall be limited to errors in a legal description, typographical or grammatical errors, or errors of actual acreage that do not impede communication of the notice to affected parties. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a hearing shall be strictly construed. If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall direct the agency having responsibility for notification to make a formal finding as to whether there was substantial compliance with the notice requirements of this zoning resolution, and such finding shall be made available to the decision-making body prior to final action on the request.
- (2) When the records of the township document the publication, mailing, and/or posting of notices as required by this article, it shall be presumed that notice of a public hearing was given as required by this section.

**(E) Computation of Time**

- (1) If any period of time is specified as business days, the calculation of time shall include all days of the week except Saturday, Sunday, or a legal holiday observed by Ross Township in which the administrative offices are closed for the entire day. Any period of time specified as calendar days shall include every day of the week.
- (2) In computing any period of time prescribed or allowed by this zoning resolution, the date of the application, act, decision, or event, from which the designated period of time begins shall not be included. The last date of the period of time to be computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which case the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as observed by Ross Township where the township offices are closed for the entire day.
- (3) When the township offices are closed to the public for the entire day which constitutes the last day of the period of time, then such application, act, decision, or event may be performed on the next day which is not a Saturday, a Sunday, or a legal holiday observed by Ross Township in which the township administrative offices are closed for the entire day.

**(F) Conduct of Public Hearing**

**(1) Rights of All Persons**

Any person may appear at a public hearing and submit information or evidence, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall be identified, state his or her address, and if appearing on behalf of a person or organization, state the name and mailing address of the person or organization being represented.

**(2) Continuance of a Public Hearing or Deferral of Application Review**

- (a) An applicant may request that a review or decision-making body's consideration of an application at a public hearing be deferred by submitting a written request for deferral to the Zoning Inspector prior to the publication of notice as may be required by this resolution. The Zoning Inspector may grant such requests, in which case the application will be considered at the next regularly scheduled meeting.
- (b) A request for deferral of consideration of an application received by the Ross Township Zoning Inspector after publication of notice of the public hearing as required by this resolution shall be considered as a request for a continuance of the public hearing, and may only be granted by the review or decision-making body.
- (c) The review or decision-making body conducting the public hearing may, on its own motion or at the request of the applicant, continue the public hearing to a fixed date, time, and place.

**(3) Withdrawal of Application**

Any request for withdrawal of an application shall be either submitted in writing to the Zoning Inspector or made through a verbal request by the applicant prior to action by the review or decision-making body.

- (a) The Zoning Inspector shall approve a request for withdrawal of an application if it has been submitted prior to publication of notice for the public hearing on the application in accordance with this resolution.

- (b) If the request for withdrawal of an application is submitted after publication of notice for the public hearing in accordance with this resolution, the request for withdrawal shall be placed on the public hearing agenda and acted upon by the review or decision-making body.
- (c) In all cases where the applicant has requested the withdrawal of an application, the application fee paid shall not be refunded.

### **3.04 ZONING CERTIFICATE (SECTION 25.3)**

#### **(A) Applicability**

- (1) A zoning certificate shall be required for any of the following:
  - (a) New construction, additions, or structural alteration (excluding interior-only alterations) of any building or structure, including, but not limited to, accessory structures, signs, fences, walls, or other structures, unless otherwise exempted in this resolution;
  - (b) Establishment of a temporary use or structure that requires a permit in [Section 8.02: Temporary Uses and Structures](#);
  - (c) Occupancy and use of vacant land, excluding any agriculturally exempt land;
  - (d) Any change in use in an existing building (not applicable to a change in tenancy when the use remains the same); or
  - (e) Any change in the use of a nonconforming use.
- (2) The Zoning Inspector shall have the authority to develop separate application forms and permits or certificates for special purposes that are reviewed in the same manner as the zoning certificate. These special permits may include, but are not limited to, sign permits, temporary use permits, fence permits, etc. For the purposes of this resolution, such permits shall be considered a zoning certificate.

#### **(B) Review Procedure**

##### **(1) Step 1 – Application**

- (a) The applicant shall submit an application for a zoning certificate for review and approval prior to submitting for a building permit from Butler County.
- (b) The applicant shall submit an application in accordance with [Section 3.03\(B\): Application Contents \(Section 25.21\)](#), and with the provisions of this section.

##### **(2) Step 2 – Review**

The Zoning Inspector shall review the application for conformance with the provisions of this zoning resolution.

##### **(3) Step 3 – Decision**

- (a) Within 30 business days after an application (Step 1) is determined to be complete, the Zoning Inspector shall either approve and issue the zoning certificate or deny the application and state in writing the reasons for the action taken. Such statement of denial shall include, but not be limited to, a list of regulations that would be violated by the proposed use, and shall transmit one copy thereof to the applicant along with one copy of the plot plan, signed, dated, and noted as denied.
- (b) In conducting the review of the application, the Zoning Inspector may consult with any department, agency, public body, official, company, or individual necessary to determine whether the application complies with the regulations of this resolution.

- (c) Upon approval, the Zoning Inspector shall give to the applicant one signed copy of the zoning certificate and maintain the second copy of the permit for township records.
- (d) If the application is denied, the applicant may submit a revised application for review in accordance with this review procedure, or the applicant may appeal the decision to the BZA in accordance with Section [3.07: Appeals](#).

**(4) Step 4 – Survey Required**

For any structure that requires the use of footers, the applicant shall be required to submit a survey, or other documentation approved by the Zoning Inspector, to demonstrate that construction is in compliance with the approved setbacks. Such documentation shall be submitted prior to the pouring of the footers.

**(C) Review Criteria**

All applications for a zoning certificate shall demonstrate conformity with the provisions of this zoning resolution.

**(D) Expiration**

- (1) Construction shall begin within 12 months of issuance of a zoning certificate. Construction shall be considered “begun” if the footers of the structure have been installed.
- (2) Failure to begin construction within 12 months shall result in the expiration of the zoning certificate unless the applicant requests and receives an extension from the Zoning Inspector for good cause.
- (3) Where the zoning certificate is for a use of land or a structure, such use shall be open or fully functioning within 12 months of issuance of a zoning certificate or the zoning certificate shall expire.
- (4) Upon expiration of a zoning certificate, a new zoning certificate application, including all applicable fees, shall be required before construction.

**(E) Temporary Zoning Certificate**

- (1) Temporary buildings and uses that require a zoning certificate as established in Section [8.02: Temporary Uses and Structures](#), shall be required to obtain a temporary zoning certificate in accordance with the procedure set forth above for approval of a zoning certificate.
- (2) A temporary zoning certificate shall be valid for a period of 30 days, unless the Zoning Inspector authorizes a longer period or as allowed in accordance with Section [8.02: Temporary Uses and Structures](#).

**(F) Revocation of a Zoning Certificate**

- (1) The Zoning Inspector shall hereby have the authority to revoke an approved zoning certificate or temporary zoning certificate if the information submitted as part of the application is found to be erroneous or fraudulent after the certificate has been issued.
- (2) The Zoning Inspector may also revoke a zoning certificate if the applicant has not conformed with all applicable federal, state, county, and township regulations, resolutions, and rules including, but not limited to, the Butler County Planning Commission, Butler County Public Health, Butler County Engineer, the Butler Soil and Water Conservation District, and the applicable water and sewer districts/agencies.

### **3.05 ZONING TEXT OR MAP AMENDMENT**

#### **(A) Amendment Initiation**

- (1) Amendments or supplements to the zoning resolution or zoning map may be initiated by:
  - (a) A motion of the Zoning Commission;
  - (b) Passage of a resolution by the Board of Trustees; or
  - (c) By the filing of an application by the owners, lessees, or their agents, of property within the area proposed to be changed or affected by the proposed amendment.
- (2) If the Board of Trustees initiates the amendment, the board shall, upon the passage of such resolution, certify such resolution to the Zoning Commission.

#### **(B) Review Procedure**

##### **(1) Step 1 – Pre-application Conference (Optional)**

- (a) If initiated by the property owners, the applicant may request to meet with the Zoning Commission to discuss the initial concepts of the proposed amendment and general compliance with applicable provisions of this zoning resolution prior to the submission of the application.
- (b) Discussions that occur during a pre-application conference or any preliminary meeting with the Zoning Commission, or any representative of the township, are not binding on the township and do not constitute official assurances or representations by Ross Township or its officials regarding any aspects of the plan or application discussed.

##### **(2) Step 2 – Application**

- (a) Applications for any change of district boundaries, classifications of property as shown on the zoning map, or changes to the zoning resolution text shall be submitted to the Zoning Commission at the township offices.
- (b) The applicant shall submit an application in accordance with Section [3.03\(B\): Application Contents \(Section 25.21\)](#), and with the provisions of this section.
- (c) Each application initiated by property owners shall be signed by at least one of the owners, or the owners authorized agent of the property within the area proposed to be reclassified, attesting to the truth and correctness of all facts and information presented with the applications.
- (d) Applications for amendments initiated by the Zoning Commission or the Board of Trustees shall be accompanied by the initiating board's motion or resolution pertaining to such proposed amendment.

##### **(3) Step 3 – Referral to the Butler County Planning Commission**

- (a) Within five days after the adoption of a motion, certification of a resolution, or the filing of an application (Step 2), the township shall transmit a copy thereof to the Butler County Planning Commission.
- (b) The Butler County Planning Commission shall recommend the approval, approval with modifications, or denial of the proposed amendment and shall submit such recommendation to the Zoning Commission.
- (c) Such recommendation shall be considered at the public hearing held by the Zoning Commission on such proposed amendment.

**(4) Step 4 – Public Hearing and Recommendation by the Zoning Commission**

- (a) Upon adoption of a motion, certification of a resolution, or the filing of an application (certified as complete by the Zoning Inspector) for an amendment (Step 2), the Zoning Commission shall set a date for a public hearing regarding the proposed amendment.
- (b) The public hearing shall not be less than 20 or more than 40 days after the date the application (Step 2) was certified as complete by the Zoning Inspector.
- (c) Notification shall be given in accordance with the ORC.
- (d) Within 30 days after the completion of the Zoning Commission’s public hearing, the Zoning Commission shall recommend the approval, denial, or modification of the proposed amendment and submit such recommendation together with such application or resolution, the text and map pertaining thereto, and the recommendation of the Butler County Planning Commission to the Board of Trustees.

**(5) Step 5 – Public Hearing and Decision by the Board of Trustees**

- (a) Upon receipt of the recommendation from the Zoning Commission (Step 4), the Board of Trustees shall set a time for a public hearing on such proposed amendment.
- (b) The date of the public hearing shall not be more than 30 days after the date of the receipt of such recommendation from the Zoning Commission.
- (c) Notification shall be given in accordance with the ORC.
- (d) Within 20 days after its public hearing, the Board of Trustees shall either adopt or deny the recommendations of the Zoning Commission. If the Board of Trustees denies or modifies the Zoning Commission’s recommendations, the majority vote of the Board of Trustees shall be required.

**(C) Effective Date and Referendum**

- (1) Any amendment adopted by the Board of Trustees shall become effective 30 days after the date of such adoption.
- (2) A referendum of any amendments may be undertaken within the 30 days after the date of the Board of Trustees decision in accordance with the ORC.

**(D) Review Criteria**

The following criteria shall be used by the Zoning Commission and the Board of Trustees in decisions regarding zoning amendments:

- (1) The amendment is in accordance with and in the spirit of this resolution;
- (2) The amendment has been reviewed to determine the consistency with the Ross Township Comprehensive Plan<sup>8</sup> and any other applicable adopted plans or policy documents;
- (3) The applicant must justify the particular zoning being sought and show that it is best suited for the specific site, based upon the policies of the township; and
- (4) Any other substantive factor deemed appropriate by the Zoning Commission or Board of Trustees.

**3.06 VARIANCE OR CONDITIONAL USE**

**(A) Review Procedure**

The review procedure for variances and conditional uses shall be as follows:

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<sup>8</sup> We are suggesting renaming the soon-to-be updated plan a comprehensive plan so that it clearly aligns with the requirements of the ORC.

**(1) Step 1 – Application**

- (a) An application for a variance or conditional use over which the BZA has original jurisdiction under Section [2.05: Board of Zoning Appeals \(BZA\)](#), may be made by any property owner or authorized agent.
- (b) The applicant shall submit an application in accordance with Section [3.03\(B\): Application Contents \(Section 25.21\)](#), and with the provisions of this section.

**(2) Step 2 – Public Hearing with the Board of Zoning Appeals**

- (a) Upon application (Step 1), the BZA shall fix a reasonable time for the public hearing on any application.
- (b) Written notice of the public hearing shall be mailed to any party of interest including each owner of property, as shown on the county auditor's current tax list, whose land is contiguous to or directly across a street or roadway from the property that is the subject of the application. Such notice shall be given a minimum of 10 days prior to the date of the public hearing.
- (c) The township shall also give notice of such public hearing by publishing a legal notice in one or more newspapers of general circulation in the county at least 10 days before the date of such hearing.
- (d) Upon the day for hearing any application, the BZA may adjourn the hearing in order to obtain additional information or to cause further notice, as it deems proper, to facilitate the discussion and decision on said application. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the time of resumption of said hearing unless the BZA so decides.

**(3) Step 3 – Decision**

- (a) Within 30 days after the hearing concludes (Step 2), the BZA shall make a decision on the application.
- (b) A copy of the BZA's decision shall be transmitted to the applicant or appellant at the applicant's address as shown on the records of the BZA. A copy shall be maintained by the Zoning Inspector.
- (c) In authorizing a variance or conditional use, the BZA may attach thereto such conditions regarding the location, character and other features of the proposed structure or use as the BZA may deem necessary in the interest of the furtherance of the purposes of this resolution. In authorizing a variance or conditional use with conditions, the BZA may require such other evidence, guarantee, or bond as it may deem necessary. The applicant shall be required to comply with the conditions.
- (d) Failure to comply with the conditions of a decision shall be deemed a violation of this zoning resolution.
- (e) Any party adversely affected by a decision of the BZA may appeal the decision to the Butler County Court of Common Pleas.
- (f) If the application is approved, the applicant may proceed with an application for a zoning certificate, where required.

**(B) Variance Review Criteria**

(1) The BZA shall have the power to authorize upon appeal in specific cases, filed as hereinbefore provided, such variances from the provisions or requirements of this resolution as will not be contrary to the public interest. Where an applicant seeks a variance, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this resolution will result in practical difficulty for an area/dimensional variance or unnecessary hardship for a use variance. The factors for an area/dimensional variance and use variance, as individually specified in this section, shall be considered and weighed by the BZA.

**(2) Area/Dimensional Variance<sup>9</sup>**

- (a) The following factors shall be considered and weighed by the BZA to determine practical difficulty:
- (i) Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;
  - (ii) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
  - (iii) Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
  - (iv) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
  - (v) Whether the variance would adversely affect the delivery of governmental services such as water, sewer, trash pickup;
  - (vi) Whether special conditions or circumstances exist as a result of actions of the owner;
  - (vii) Whether the property owner's predicament can feasibly be obviated through some method other than a variance;
  - (viii) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance; and/or
  - (ix) Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.
- (b) No single factor listed above may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts.

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<sup>9</sup> An area or dimensional variance is one of the most basic forms of variances where someone requests to reduce a setback, number of parking spaces, etc. This is compared to a use variance, which is where they are asking for a use not necessarily permitted in the zoning district.

**(3) Use Variance**

In order to grant a use variance, the BZA shall determine that strict compliance with the terms of this resolution will result in unnecessary hardship to the applicant. The applicant must demonstrate such hardship by clear and convincing evidence that all of the following criteria are satisfied:

- (a) The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located;
- (b) The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
- (c) The variance requested cannot otherwise be resolved by a zoning map amendment;
- (d) The essential character of the neighborhood will not be substantially altered as a result of the variance;
- (e) There is an existing structure that cannot be reasonably used for a permitted use or a conditionally permitted use in the applicable zoning district;<sup>10</sup>
- (f) The proposed use is listed in [Table 5-1: Permitted Use Table](#);
- (g) The hardship condition is not created by actions of the applicant;
- (h) The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
- (i) The granting of the variance will not adversely affect the public health, safety or general welfare;
- (j) The variance will be consistent with the general spirit and intent of this Resolution;
- (k) The requested use is permitted in another district in this resolution; and
- (l) The variance sought is the minimum that will afford relief to the applicant.

**(C) Conditional Use Review Criteria**

In reviewing conditional uses, the BZA shall consider the following:

- (1) The use is a conditional use, permitted with approval by the BZA, in the district where the subject lot is located;
- (2) The use is in accordance with the objectives of the Ross Township Comprehensive Plan and zoning resolution; and
- (3) The conditional use will not substantially and/or permanently injure the appropriate use of neighboring properties and will serve the public convenience and welfare.
- (4) The BZA shall also consider the following as applicable to the subject application:
  - (a) The comparative size, floor area and mass of the proposed structure(s) in relationship to adjacent structures and buildings in the surrounding properties and neighborhood;
  - (b) The frequency and duration of various indoor and outdoor activities and special events and the impact of these activities on the surrounding area;
  - (c) The number of transit movements generated by the proposed use and relationship to the amount of traffic on abutting streets and on minor streets in the surrounding neighborhood;
  - (d) The capacity of adjacent streets to handle increased traffic in terms of traffic volume;

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<sup>10</sup> This is the most important criteria for a use variance as it sets up the hardship. This would allow the BZA to consider a nonresidential use for, as an example, an old church or school in a residential district, thus preventing its demolition to make room for permitted uses.

- (e) The added noise level created by activities associated with the proposed use and the impact of the ambient noise level of the surrounding area and neighborhood;
- (f) The requirements for public services where the demands of the proposed use are in excess of the individual demand of adjacent land uses in terms of police and fire protection, and the presence of any potential fire or other hazards created by the proposed use;
- (g) The general appearance of the neighborhood will not be adversely affected by the location of the proposed use on the parcel;
- (h) The impact of night lighting in terms of intensity and duration and frequency of use as it impacts adjacent properties and in terms of presence in the neighborhood;
- (i) The impact of the landscaping of the proposed use in terms of maintained landscaped areas versus areas to remain in a natural state, and the openness of landscape versus the use of buffers and screens;
- (j) The impact of a significant amount of hard-surfaced areas for building, sidewalks, drives, parking areas and service areas in terms of noise transfer, water runoff and heat generation;
- (k) The potential for the proposed use to remain in existence for a reasonable period of time and not become vacant or unused. Consideration should also be given to unusual single purpose structures or components of a more temporary nature; and
- (l) Any other physical or operational feature or characteristic that may affect the public health, safety and welfare.

**(D) Expiration**

- (1) Conditional use and variance approvals shall run with the land and shall not expire or be voided if there is a change in ownership.
- (2) An applicant who receives an approval of a conditional use or variance shall be required to submit a completed application for a zoning certificate within six months of the BZA decision or the approval shall expire. The applicant may request an extension of an additional six months if such request is submitted to the Zoning Inspector in writing a minimum of two weeks prior to the date of expiration.
- (3) For a conditional use or variance approval, the approvals shall expire if the related zoning certificate expires.
- (4) A conditional use approval shall expire if the allowed conditional use is discontinued for a period of more than two years.
- (5) Upon expiration of a variance or conditional use approval, a new variance or conditional use application, including all applicable fees, shall be required.

**(E) Continuation of Existing Uses Conditionally Permissible Under This Resolution**

- (1) All legally established uses existing at the time of passage of this resolution or amendments thereto that are made a conditional use by adoption of this resolution or by a zoning text amendment shall be issued conditional use permits within one year after the passage of this resolution or amendments thereto.
- (2) The BZA shall issue such permits and may approve the conditional uses as brought forth by the owner.

### 3.07 APPEALS

#### (A) Appeal Applicability

An appeal to the BZA may be taken by the applicant or any person affected or aggrieved by a decision of the Zoning Inspector or administrative official in the enforcement of this zoning resolution. Such appeal shall be taken within 20 days after receipt of notification of the decision, by filing with the Zoning Inspector and with the BZA, a notice of appeal specifying the grounds thereof including applicable sections of the Ross Township Zoning Resolution.

#### (B) Review Procedure

The review procedure for an appeal shall be as follows:

##### (1) Step 1 – Filing of Appeal

- (a) Upon the filing of an appeal, the Zoning Inspector shall transmit to the BZA all the documents and other evidence constituting the record.
- (b) The filing of an appeal shall stay all proceedings unless the Zoning Inspector or any affected person certifies to the BZA that, by reason of facts pertaining to the matter in question, a stay, in their opinion, would cause imminent peril to life or property. When such certification is made, proceedings shall not be stayed except by order granted by the BZA.
- (c) All appeals shall be submitted with the required fees, if applicable, as established in the Ross Township fee schedule.

##### (2) Step 2 – Public Hearing with the Board of Zoning Appeals

- (a) Upon the filing of an appeal (Step 1), the BZA shall fix a reasonable time for the public hearing on the appeal, give notice in writing at least ten days prior to the hearing to the parties of interest, and give notice of such public hearing by one publication in one or more newspapers of general circulation in the county at least ten days before the date of such hearing.
- (b) Written notice of the public hearing shall be mailed to any party of interest including each owner of property, as shown on the county auditor's current tax list, whose land is contiguous to or directly across a street or roadway from the property that is the subject of the application. Such notice shall be given a minimum of 10 days prior to the date of the public hearing.
- (c) The township shall also give notice of such public hearing by publishing a legal notice in one or more newspapers of general circulation in the county at least 10 days before the date of such hearing.
- (d) Upon the day for hearing any appeal, the BZA may adjourn the hearing in order to obtain additional information or to cause further notice, as it deems proper, to facilitate the discussion and decision on said appeal. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the time of resumption of said hearing unless the BZA so decides.
- (e) At the hearing, any person may appear in-person or by an attorney.

##### (3) Step 3 – Decision

- (a) Within 30 days after the hearing concludes (Step 2), the BZA shall make a decision on the appeal.

- (b) A decision of the BZA shall not become final until the expiration of 30 days from the date of such decision unless the BZA shall find the immediate taking effect of such decision is necessary for the preservation of property or personal rights and shall so certify on the record.
- (c) A certified copy of the BZA's decision shall be transmitted to the applicant or appellant at the applicant's address as shown on the records of the BZA and to the Zoning Inspector. Such decision shall be binding upon the Zoning Inspector and observed by him and he shall incorporate the terms and conditions of the decision in the permit to the appellant, whenever the BZA authorizes a zoning certificate.
- (d) The BZA may, in conformity with the provisions of this section, reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination as necessary; and to that end, shall have all powers of the Zoning Inspector from whom the appeal is taken.
- (e) Failure to comply with the conditions of a decision shall be deemed a violation of this zoning resolution.
- (f) Any party adversely affected by a decision of the BZA may appeal the decision to the Butler County Court of Common Pleas.

**(C) Appeal Review Criteria**

An order, decision, determination, or interpretation shall not be reversed or modified by the BZA unless there is competent, material, and substantial evidence in the record that the order, decision, determination, or interpretation fails to comply with either the procedural or substantive requirements of this zoning resolution, state law, or federal law.