



Planning Commission  
App. No. 004-2014-TA

## Zoning Text Amendment

Homer Township

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**Meeting:** March 5, 2014  
**Applicant:** Homer Township Zoning Commission  
**Hearing:** April 2, 2013 (Zoning Commission)  
**Amendments:** Section 301-1, R-2 Residential; Section 301-4, Site Plan Review, Section 401-3, Conditionally Permissible Uses; Section 601-6, Enforcement; Section 801-1, Procedure for Making an Application; Section 801-2, Basis of Determination; Section 901-4, Administration and Enforcement; and Section 1001-7, Notice of Hearings.  
**Reviewer:** Susan Hirsch

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**Proposed Amendments:** The amendments proposed by the Lafayette Township Zoning Commission, include:

1. Section 301-1-D, R-2 Residential
2. Section 301-4-B, Site Plan Review
3. Section 401-3 – Conditionally Permissible Uses
4. Section 601-6C, Enforcement
5. Section 801-1-B-2, Procedure for Making an Application.
6. Section 801-2, Basis of Determination
7. Section 901-4-A-1, Administration and Enforcement
8. Section 1001-7, Notice of Hearings

Homer Township submitted these amendments for Informal Review in January of this year. The current submittal reflects most of the changes suggested at the time of the Informal Review. Where changes have not been made and there is still concern, Medina County Department of Planning Services comments are included. The amendments were also sent to the Prosecutor's Office for review but their comments were not available in time to be incorporated into the Township's submitted amendments. The Township has indicated that it is their intent to incorporate the Prosecutor's Office comments into their revised text.

New text is **bold and underlined**, deleted text is ~~struck through~~, Staff Comments are in *italics* and comments from the Prosecutors Office ARE CAPITALIZED.

### **Amendment #1 - Sec. 301-1D - Addition of text**

#### **Section 301-1 R-2 RESIDENTIAL**

- A. Land in any district may be used for agricultural purposes.
- B. For the purpose of this Resolution, "Agriculture" shall include farming, dairying, horticulture, forestry and floriculture.
- C. No zoning certificate shall be required for the construction of buildings incidental to the use of the land for agricultural purposes on which such buildings shall be located. The residence and garage must comply with the zoning regulations and a zoning certificate is required.

- D. Roadside stands consisting of removable structures may be located on the premises for the purpose of selling products which are produced on the same property where the stand is located, provided such stands are at least twenty-five (25) feet back from the street **right-of-way** (*Ref. Sec. 401-4-D-1*) and provided that adequate off-street parking facilities are available.

**Setback for undedicated roadways shall be twenty-five (25) feet from the edge of the roadway.**

**PROSECTOR'S OFFICE COMMENTS:**

1. HERE THE TOWNSHIP PROPOSES TO ESTABLISH A SETBACK FOR ROADSIDE STANDS TWENTY-FIVE (25) FEET FROM THE ROAD RIGHT-OF-WAY. IN DOING SO, THE TEXT REFERENCES SEC. 401-4-D-1. HOWEVER, THAT SECTION ESTABLISHES AN 80 FOOT FRONT YARD. CONSIDER REDRAFTING TO INDICATE SEC. 4014-D-1 NOTWITHSTANDING, ROADSIDE STANDS ARE PERMITTED TWENTY-FIVE (25) FEET FROM THE ROAD RIGHT-OF-WAY.
2. IN ADDITION, IS IT THE TOWNSHIP'S INTENTION TO PERMIT PROPERTY OWNERS TO SELL ANY PRODUCTS PRODUCED ON THE PROPERTY (E.G. COMMERCIAL, RETAIL, ETC?), OR ONLY AGRICULTURAL PRODUCTS? IF AGRICULTURAL, ONLY 50% OF THE GROSS INCOME FROM THE AGRICULTURAL PRODUCT MUST BE GROWN ON PROPERTY FOR THE USE TO BE EXEMPT. MOREOVER, THE AGRICULTURAL PRODUCT CAN BE GROWN ON ANY PROPERTY THE MARKET OWNER OWNS OR OPERATES, NOT MERELY THE PROPERTY WHERE THE MARKET IS LOCATED. IN ADDITION, THE STAND WOULD NOT HAVE TO BE REMOVABLE TO BE EXEMPT. IF THE PRODUCTS ARE NOT AGRICULTURAL IN NATURE, THE USE WOULD NOT BE EXEMPT FROM ZONING UNDER OHIO LAW.
3. I MUST NOTE THAT SECTION (B) STATES, "FOR THE PURPOSE OF THIS RESOLUTION, 'AGRICULTURE' SHALL INCLUDE FARMING, DAIRYING, HORTICULTURE, FORESTRY AND FLORICULTURE." OHIO REVISED CODE SEC. 519.01 PROVIDES A BROADER DEFINITION OF "AGRICULTURE". CONSIDER REVISING TO EXPAND THE DEFINITION IN ACCORDANCE WITH ORC SEC. 519.01.
4. CONSIDER EDITING SECTION (C) TO INDICATE THAT THE "PRIMARY" RESIDENCE MUST COMPLY WITH ZONING.

**Amendment #2 - Sec. 301-4-B-3 - Text amendment & addition of text:**

**Section 301-4 SITE PLAN REVIEW**

- B. Site Plan Application Requirements

The site plan shall include the following requirements:

1. Completed application form,
2. Architectural plans, three (3) copies, showing exterior elevations and floor plans,
3. Site plans, seven (7) copies, ~~illustrating the following items~~ shall illustrate the following items ~~and drawn to a legible scale;~~
  - a. General Vicinity Map,
  - b. Property Boundary Lines and Setback Lines,
  - c. Elevation Contours, existing and proposed,
  - d. Traffic and Circulation Plan,
  - e. Landscaping/Screening/Buffering Requirements (see Article III, Section 301-4),
  - f. Adjacent Streets,
  - g. Parking and Loading Plan,
  - h. Grading and Erosion Control, Surface Drainage Plan,
  - i. Proposed Signage
  - j. Footprints of existing and proposed structures,
  - k. Utilities Plan, and Structures,
  - l. All easements and rights-of-way affecting the site.

All site plan drawings shall **include dimensions and** be clearly drawn **to the indicated scale.** ~~prepared by a professional engineer, architect, or surveyor, as applicable, and shall bear their professional seal on the plans.~~

**Additional information may be requested by the Zoning Commission or by the Board of Zoning Appeals from the Applicant, if deemed necessary.**

**Staff Comments:** *This could be interpreted to be arbitrary as there is no criteria for when and/or under what circumstances additional information can be requested. Prosecutor's Office comments below do address this concern.*

**PROSECTOR'S OFFICE COMMENTS:** ADD "TO COMPLY WITH ZONING REGULATIONS" TO THE END OF THE SENTENCE.

**Amendment #3 - Sec. 401-3 – Add new item and re-letter**

**Section 401-3            CONDITIONALLY PERMISSIBLE USES**

- S.     Veterinary Clinic/Animal Hospital subject to Article VIII of this Resolution.
- T.     Home Occupations-Type 2 subject to Article VIII of this Resolution.

- U. Telecommunications Facilities subject to procedures and criteria as outlined in Article VIII. (Adopted 7/29/98)

**NEW V. Wholesale/retail produce markets or produce auctions**  
**For the purpose of this section, "auction" is defined as any sale where fruits, vegetables or plants are sold by an auctioneer who is either the agent for the owner of such property, or is in fact the owner thereof.**

**PROSECTOR'S OFFICE COMMENTS:** THERE MAY BE OCCASIONS WHERE A PRODUCE MARKET OR AUCTION MEETS THE DEFINITION OF "AGRICULTURE" (E.G. THE PRODUCE IS GROWN ON LAND OWNED OR OPERATED BY THE MARKET OWNER). IN SUCH INSTANCES, THE TOWNSHIP WOULD HAVE NO AUTHORITY TO REQUIRE A CONDITIONAL ZONING PERMIT.

- W. Wind/Solar Energy Generating Devices (non-commercial) as an Accessory Use Structure (Eff. 10-27-10)

**Amendment #4 -ARTICLE VI – Sec. 601-6C– add text, word change**

**Section 601-6 ENFORCEMENT**

- A. Maintenance - The Zoning Inspector may order any sign to be painted or refurbished at least once each year if needed to keep the sign in a neat and safe condition. All support, guys, braces and anchors for such signs shall be maintained in a safe condition. The Zoning Inspector may order removed any such sign that is not so maintained, and it shall be unlawful for the owners or person having charge of such sign not to remove the same after receiving notice from the Zoning Inspector to do so.
- B. Removal of Unsafe Signs - If the Zoning Inspector shall find that any sign or other advertising structure is unsafe or insecure, or is a menace to the public, or has been constructed or erected, or is being maintained in violation of the provisions of this Resolution, notice shall be given in writing by the Zoning Inspector to the owner, agent or person having the beneficial use of said sign, who shall thereafter immediately correct the condition for which said notice was given.

**PROSECTOR'S OFFICE COMMENTS:** WHEREAS I HAVE NO COMMENT REGARDING THE ABOVE TEXT CHANGE, I DID NOTICE THAT SEC. 601-3(B) PROHIBITS TEMPORARY SIGNS IN THE ROAD RIGHT OF WAY. MOREOVER, THESE PROHIBITIONS SPECIFICALLY APPLY TO POLITICAL SIGNS, ANNOUNCEMENTS OF CIVIC ACTIVITIES AND ACTIVITIES OF NONPROFITS. REFERENCE TO 'POLITICAL SIGNS', "CIVIC ACTIVITIES" AND "NON-PROFITS" ARE ALL IMPERMISSIBLE CONTENT-BASED RESTRICTIONS AND SHOULD BE REMOVED. MOREOVER, ROAD RIGHT-OF-WAYS HAVE BEEN

FOUND BY COURTS TO BE PLACES OF TRADITIONAL PUBLIC SPEECH. SO LONG AS SUCH SIGNS DO NOT OBSTRUCT VIEWS OR CREATE TRAFFIC HAZARDS, THEY CAN BE PLACED IN THE RIGHT OF WAY.

PLEASE NOTE: I DID NOT REVIEW THE ENTIRE SIGN REGULATION SECTION OF THE ZONING RESOLUTION. IF YOU WOULD LIKE, YOU MAY SUBMIT THESE REGULATIONS TO OUR OFFICE FOR A COMPLETE REVIEW.

- C. Zoning Permit Required - A Zoning Permit shall be required for every ~~permitted~~ **proposed** sign except as otherwise provided herein. All signs shall be erected only upon the submission of a proper plan, **which shall be clearly drawn to the indicated scale**, and ~~its approval~~ **approved** by the Zoning Inspector.

**Amendment #5- Section 801-1-B-2 - text amendment**

**Section 801 PROCEDURE FOR MAKING AN APPLICATION.**

A. Submission

Any application shall be submitted through the Zoning Inspector to the Board of Zoning Appeals on a special form for that purpose. Each application shall be accompanied by the payment of a fee as indicated in Section 901-5.

B. Data Required with Application

1. Form supplied by Zoning Inspector, completed by applicant.
2. Site plan, plot plan or development plan of the entire property being considered, drawn to ~~a reasonable scale~~ **the indicated scale** and showing the location of all abutting streets, and proposed structures, the type of buildings and their uses.

**PROSECTOR'S OFFICE COMMENTS: NO COMMENTS.**

**Amendment #6 - Section 801-2-Add new item "H"**

**Section 801-2 BASIS OF DETERMINATION.**

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

## General Standards

The Board of Zoning Appeals shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use on the proposed location:

- A. Will be harmonious with and in accordance with the general objectives, or with any specific objective of the Township Comprehensive Plan of current adoption;
- B. Will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the same area;
- C. Will not be hazardous or disturbing to existing or future neighboring uses;
- D. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal or schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service;
- E. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
- F. Will not involve any uses, activities, processes, materials, and equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, odors or noise of any nature;
- G. Will be consistent with the intent and purpose of this Resolution.
- NEW H. Additional information may be requested by the Board of Zoning Appeals from the Applicant, if deemed necessary.**

**Staff Comments:** *This could be interpreted to be arbitrary as there is no criteria for when and/or under what circumstances additional information can be requested. Prosecutor's Office comments below do address this concern.*

### **PROSECTOR'S OFFICE COMMENTS:**

1. ADD "TO COMPLY WITH ZONING REGULATIONS" TO THE END OF THE SENTENCE.
2. I NOTICED THAT IN THE INTRODUCTORY PARAGRAPH, THE RESOLUTION STATES "THE BOARD OF ZONING APPEALS SHALL ESTABLISH BEYOND REASONABLE DOUBT THAT THE GENERAL STANDARDS AND THE SPECIFIC STANDARDS PERTINENT TO EACH USE

AND INDICATED HEREIN SHALL BE SATISFIED BY THE COMPLETION AND OPERATION OF THE PROPOSED DEVELOPMENT." "BEYOND A REASONABLE DOUBT" IS THE LEGAL STANDARD FOR CRIMINAL PROSECUTIONS. I SUGGEST REMOVING REFERENCE TO "BEYOND REASONABLE DOUBT"

**Amendment #7-Sec. 901-4-A-1-text amendment**

**Section 901-4 ZONING PERMITS REQUIRED**

- A. Before constructing, changing the use of or altering any building, including accessory buildings, or changing the use of any premises, application shall be made to the Zoning Inspector for a zoning permit. The applications shall include the following information;
1. ~~A plot plan~~ **A site plan**, drawn to **the indicated** scale showing the exact dimensions of the lot **or lots** to be built on,

**PROSECTOR'S OFFICE COMMENTS:** CONSIDER ADDING REFERENCE TO SEC. 301-4 WHICH INCLUDES EXPLICITLY STATING THE REQUIREMENTS FOR A SITE PLAN.

**Amendment #8 – Sec. 1001-7 - Change number of notification days**

**Section 1001-7 NOTICE OF HEARINGS.**

When a notice of appeal has been filed in proper form with the Board of Zoning Appeals, the secretary shall immediately place the said request for appeal upon the calendar for hearing, and shall state on the notices the time, place and object of the hearing to be served personally or by mail addressed to the parties making the request for appeal, at least ~~five (5)~~ **ten (10)** days prior to the date of scheduled hearing. Written notice of such hearing shall also be given by mail to any person, firm, or corporation owning the premises located within five hundred (500) feet of the land to which such appeal or application is related. All notices shall be sent to addresses given on the last assessment roll. Such hearings shall be advertised by one (1) publication in one (1) or more newspapers of general circulation in the Township at least ~~twenty (20)~~ **ten (10)** days before the date of such hearing. The Board may recess such hearings from time to time, and, if the time and place of the continued hearing be publicly announced at the time of adjournment, no further notice shall be required.

**PROSECTOR'S OFFICE COMMENTS:** NO COMMENTS.

**STAFF RECOMMENDATION:** Staff recommends **APPROVAL WITH MODIFICATIONS** subject to Staff Comments for the above proposed text amendments to the Homer Township Zoning Resolution. Staff further recommends that Homer Township incorporate the comments from the Medina County Prosecutor's Office into their final language.

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