



Planning Commission  
App. No. 016-2015-TA

## Zoning Text Amendment Homer Township

**Meeting:** April 1, 2015

**Applicant:** Homer Township Zoning Commission

**Hearing:** April 2, 2013 (Zoning Commission)

**Amendments:** Section 301-4, Site Plan Review; Section 901-1, Zoning Inspector, Section 901-2, Board of Zoning Appeals; Section 1001-1, Composition and Appointment; Section 1001-3, Quorum; Section 1001-5A, Appeals; Section 1001-5B, Variances; Section 1001-5C, Exceptions; Section 1001-6, Procedure; Section 1001-8, Appeals; Section 1101-1, Composition & Appointment ; Section 1101-3, Quorum and New Appendices E-H.

**Reviewer:** Susan Hirsch

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

1. Article III Section 301-4-B, Site Plan Review
2. Article IX Section 901-1, Zoning Inspector
3. Article IX Section 901-2, Board of Zoning Appeals
4. Article X Section 1001-1, Composition & Appointment
5. Article X Section 1001-3, Quorum
6. Article X Section 1001-5A, Appeals
7. Article X Section 1001-5B, Variances
8. Article X Section 1001-5C, Exceptions
9. Article X Section 1001-6, Procedure
10. Article X Section 1001-8, Appeals
11. Article X1 Section 1101-1, Composition & Appointment
12. Article X1 Section 1101-3, Quorum
13. New Appendices:
  - E. Sec 519.13 ORC
  - F. Sec 519.14 (A) and (B) ORC
  - G. Duncan Factors
  - H. Sec 519.04 ORC

**Staff Recommendation: APPROVAL WITH MODIFICATIONS**

New text is **bold and underlined**, deleted text is ~~struck through~~, Staff Comments are in *italics*.

### 1) **ARTICLE III GENERAL PROVISIONS**

#### **Section 301-4 SITE/PLOT PLAN REVIEW**

##### **PURPOSE**

The purpose of this section is to establish procedures for site/**plot** plan review to ensure that all the elements required in this Resolution are illustrated in the applicant's site/**plot** plan. The design and the physical location of the use shall conform to the general intent of the community **as specified in the Homer Township Comprehensive Plan.**

A. Developments that Require a Site/**Plot** Plan Review

Upon making application for a zoning permit for a business/commercial activity in any zone within Homer Township, the applicant will be required to submit to the Homer Township Zoning Commission, or when a conditional use permit is involved, to the Homer Township Board of Zoning Appeals, a complete site/**plot** plan for the proposed business/commercial development. **See Sec. 901-2 of this Resolution.**

The Zoning Commission and/or Zoning Board of Appeals shall conduct a site/**plot** plan review for all developments that come before it, as set forth in this section and all other applicable sections of this Resolution. Site/**plot** plan review shall be required for the following types of developments.

1. New construction or relocation of a building for all types of development, except for single and two-family dwellings.
2. Conversion of an existing structure to another permitted use, where no new exterior construction or site development is planned; for example, the conversion of residential use to a commercial use, and
3. Uses outlined in Section 403, which are implementing an addition or expansion having at least one of the following effects:
  - a. Alterations or rearrangements of on-site parking which results in a reduction or increase in the number of parking spaces,
  - b. An increase in the existing floor space area by 40% or more,
  - c. Alteration of traffic flows by way of ingress and egress or within the site itself,
  - d. The construction of public or private off-street parking areas where they are permitted under this Resolution, and
  - e. Employment increases where additional parking is required to remain compliant with Article VII, Section 701 of this Resolution.

B. Site/**Plot** Plan Application Requirements

The site/**plot** plan shall include the following requirements:

1. Completed application form,

2. ~~Architectural plans, three (3) copies, showing exterior elevations and floor plans,~~ **Following sections will be re-numbered as necessary.** *The Township has authority to review architectural plans only if they have an Architectural Review Board,*

3. Site/**plot** plans, seven (7) copies, illustrating 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/**plot** plan drawings shall be clearly drawn and prepared by a professional engineer, architect, or surveyor, as applicable, and shall bear their professional seal on the plans.

4. The application shall be accompanied by a fee, as outlined in Section 901-5 of this Resolution, in order to be processed.

C. Review Standards

All site/**plot** plan applications shall illustrate the following considerations:

1. Site/**plot** plan shall show that thoroughfares, service roads, driveways and parking areas encourage pedestrian and vehicular traffic safety on both public and private lands.
2. Screening of parking areas, service areas, and refuse storage areas from surrounding properties shall be provided through landscaping and/or ornamental walls or fences where necessary to create a visual and/or physical barrier between conflicting and incompatible land uses.
3. On-site traffic circulation shall be designed for fire and police protection.

4. Grading and surface drainage provisions shall be designed to minimize adverse effects on abutting properties, streams, and public streets and to minimize the possibility of erosion.
5. All lighting shall be directed away from adjacent streets or roads so as not to impair safe movement of traffic, and no lighting shall shine directly on adjacent properties or residences.
6. All development should be designed to preserve the natural amenities of the site and minimize the possibility of any adverse effects upon adjacent developments.
7. The overall development concept shall reflect the goals and intent of the Homer Township Comprehensive Plan.

**D. Review Process**

Once a complete application for site/**plot** plan review has been filed, the Homer Township Zoning Inspector shall:

1. As needed, circulate copies of the site/**plot** plan to officials and technicians that would have information or knowledge pertinent to the project, such as the County Planning Commission, County Building Inspector, Sheriff's Department, Fire Chief, County Highway Engineer, County Sanitary Engineer, County Health Department, and any other necessary agencies, for review and comment.

Reviews by outside agencies or individuals shall be returned to the Township Zoning Inspector within ten (10) working days of the date of mailing if they are to be considered by the Township.

2. Within five (5) working days of the return of all comments the Township Zoning Inspector shall arrange for a meeting with the applicant if there are any comments to discuss. Any necessary revisions should be made prior to the Zoning Commission meeting or Board of Zoning Appeals hearing.
3. The Township Zoning Inspector shall notify the identified property owners, applicant, and other interested parties by mail, no less than fifteen (15) days prior to the Zoning Commission meeting, or Board of Zoning Appeals hearing (if the applicant is contesting a decision of the Zoning Commission, or if the applicant is seeking a conditional use permit requiring site/**plot** plan review), at which the subject site/**plot** plan will be considered. The notice shall indicate that any interested party may review a case file by contacting the Township Zoning Inspector to arrange a time when the case file may be reviewed.

E. Conformance with Site/**Plot** Plan

All aspects of the development shall conform to the approved site/**plot** plan, and be reviewed by the Township Zoning Inspector.

1. A cash performance bond or other financial guarantee shall be placed on deposit with the Township's Clerk to ensure that the landscaping be installed, that the hard-surfacing of the private parking drives and parking areas be installed in conformance with the approved plan. Such bond or guarantee shall be an amount equal to the cost of the construction of the improvements based on an estimate approved by the Township Trustees, and shall be for a period not to exceed three (3) years, providing for the complete construction of the improvements within that period.
2. Issuance and Revocation of Zoning Permit – Upon the approval of a site/**plot** plan application and the deposit of a performance bond or other guarantee in the appropriate amount, the Township Zoning Inspector, for permitted uses, or the Board of Appeals for conditionally permitted uses, shall issue a zoning permit specifying the conditions of the approval. If a zoning permit expires beyond one (1) year, any deposits of a performance bond or financial guarantee shall be returned to the depositor, and each application thereafter shall be accompanied by the required data and fees.

**Staff Comment:** *Throughout this Section the Township proposes to change “site plan” to “site/plot plan”. “Plot plan” is an antiquated term that is synonymous with site plan. It is unnecessary to include both terms. Rather than making the numerous changes it is suggested that the terms be defined as synonymous, and/or remove the term “plot” from Article VIII Conditional Zoning Certificates, Section 801-1 B.2.*

## ARTICLE IX ADMINISTRATION AND ENFORCEMENT

### 2) **Sec. 901-1 –ZONING INSPECTOR ---- First Paragraph -**

~~A Zoning Inspector shall be employed to act as the Board of Zoning Appeals' office for the purpose of effecting proper administration of the Resolution. The term of employment, rate of compensation and other such conditions shall be set by the Township Trustees. For the purpose of effecting this Resolution, the Zoning Inspector shall have the powers of a police officer.~~  
**per section 5619.16 of the Ohio Revised Code (ORC) to enforce this Zoning Resolution.**

### 3) **Sec. 901-2 BOARD OF ZONING APPEALS**

The Board of Zoning Appeals shall have the power to administer Article VIII – Conditional Zoning Permits of this Resolution and shall have the power to issue conditional zoning permits as specified and regulated in this Resolution.

The Board of Zoning Appeals shall have the power to administer Article VIII – Conditional Zoning Permits of this Resolution and shall have the power to issue conditional zoning permits as specified and regulated in this Resolution. **See Sec. 301-4 of this Resolution.**

## ARTICLE X BOARD OF ZONING APPEALS

### 4) Sec. 1001-1 COMPOSITION AND APPOINTMENT

~~The Board of Zoning appeals shall consist of five (5) members appointed by the Township trustees. Each member shall be appointed for a period of three (3) years, except that two (2) of the initial members shall be appointed for one (1) year and two (2) of the initial members shall be appointed for two (2) years. In the event of death or resignation of a member, the Township Trustees shall make the appointment for the duration of the un-expired portion of the term of the member. The members of the Board shall be residents of the unincorporated territory in the Township and shall receive compensation as determined by the Board of Trustees. The Secretary of the Board of zoning appeals shall receive compensation as determined by the Board of Trustees.~~

**See Appendix E in this Resolution- ( ORC Section 519.13, Township Board of Zoning Appeals).**

### 5) Sec. 1001-3 QUORUM

The **Board of Zoning Appeals** shall require a quorum of three (3) members at all of its meetings, and the concurring vote of ~~three (3) members~~ **a majority of members present** shall be necessary to ~~e~~ffect any order.

### Sec. 1001-5 POWERS and DUTIES

### 6) Sec. 1001-5A – Appeals

~~The Board shall hear and determine all appeals from any decision or action of the Zoning Inspector in the administration or enforcement of this Resolution. The Board shall hear and determine all appeals from the refusal of the Zoning Inspector or Zoning Commission because of anything contained in this Resolution to issue zoning certificates.~~

**See Appendix F in this Resolution (ORC Section 519.14 (A) & (B) )** *Suggest including (C) & (D) of Sec. 519.14 ORC in Appendix F.*

### 7) Sec. 1001-5B - Variances

Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this Resolution, the Board shall have the power ~~in passing an appeal to~~ **grant use variances pursuant to Ohio Revised Code 519.14 (B) (See Appendix F), and use area variances pursuant to Ohio Case Law. (See Appendix G, Duncan Factors)** ~~vary or modify any of the provisions of this Resolution relating to the construction, structural changes in,~~

~~equipment or alteration of buildings or structures, or the use of the land, buildings or structures so that the spirit of this Resolution shall be observed, public safety secured, and substantial justice done.~~

*Suggest removing the word “use” in line four (4) above and replacing it with the word “area”. The Duncan Factors provide criteria for evaluating area variances. The standard of review for area variances is “practical difficulty”. Use variances have a higher standard of review, “unnecessary hardship.”*

The granting of such variance will not be of substantial detriment to the public interest or to the property or improvements in the district in which the variance is sought, and will not materially impair the purpose of this Resolution.

~~In specific instances the Board may permit such modification of the yard or lot area or width regulation as may be necessary to secure the appropriate improvement of a parcel of land that is too small to be appropriately improved without such modification, provided the parcel was separately owned at the time of passage of this Resolution or is adjacent to buildings that do not conform to the general restrictions applicable to their location.~~

/In granting a variance the Board of Zoning Appeals may impose such conditions as it may deem necessary, *including those contained in Appendix G of this Resolution*, to protect the public health, safety, or welfare and to further the purpose and intent of this Resolution.

#### **8) Sec. 1001-5C ~~Exeptions~~ Conditional Uses**

The Board of Zoning Appeals shall have the authority to ~~make exceptions as specifically described below. To grant conditional zoning certificates~~ **permits** for the use of land, buildings, or other structures as ~~special exceptions to this Resolution as specifically stated and provided elsewhere in this Resolution~~ **as conditional uses pursuant to Sec. 519.14(C) of the Ohio Revised Code as specifically provided for in this Resolution.** *Staff suggests retaining the term “certificate”. The ORC uses “certificate” as does Article VIII of the Homer Zoning Resolution.* Also suggest including (C) & (D) of Sec. 519.14 ORC in Appendix F.

#### **9) Sec. 1001-6 PROCEDURE**

~~The Board of Zoning Appeals shall act according to the procedure specified by law including this Resolution. The Board shall keep minutes of its proceedings showing the vote for each member upon every question, or if absent or failing to vote, it shall indicate such fact. All appeals and applications made to the Board of Zoning Appeals shall be in writing and on forms prescribed therefore. Every appeal or application shall refer to the specified provision of the Resolution, and shall set forth the interpretation that is claimed by the Board, the details of the variance that is applied for the grounds on which it is claimed that the variance should be granted, as the case may be. Every decision of the Board shall be by Resolution, each of which shall contain a full record of the findings of the Board of Zoning Appeals by case number under one or another of the following headings;~~

**Interpretation,  
Exceptions, or**

**Variances;**

together with all documents pertaining thereto. In the event that the Board of Zoning Appeals will find it necessary to draw upon any planning, legal, engineering, or any other expert testimony, such fee shall be raised in order to cover all expenses of such expert testimony.

**The Board of Appeals shall organize and adopt rules in accordance with this Zoning Resolution and as otherwise required by law. The Board shall keep minutes of its proceedings showing the vote for each member upon each question, or if absent or failing to vote, it shall indicate such fact. All appeals and applications made to the Board of Zoning Appeals shall be in writing on forms prescribed therefore. Every appeals or application shall refer to the specific provision or provisions of this Zoning Resolution necessary for its resolution, shall set forth the interpretation that is claimed, the details of any variance that is applied for, and the grounds on which it is claimed that the variance should be granted, as the case may be.**

**In the event that the Board of Zoning Appeals finds it necessary to draw upon any planning, legal, or any other expert, for the resolution of any issue before it, the appellant or applicant before it shall be responsible for any additional costs to be incurred.** *This paragraph clarifies that the applicant will be responsible for any additional costs incurred, i.e. consultants or experts.*

**10) Sec. 1001-8 APPEALS**

**In addition to the authority granted a Board of Zoning Appeals by Ohio Revised Code Sec. 519.14 (Appendix F), Appeals** an appeal to the Board of Zoning Appeals may be taken by any officer or Board of Homer Township, deeming himself/**herself** or itself to be adversely affected by the decision of the Zoning Inspector or Zoning Commission respecting interpretation of this Resolution. *Yes!*

Appeals shall be made no later than ~~fifteen (15)~~ **twenty (20)** calendar days after the date of the grievance. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative officer whose decision is appealed from shall certify to the Board of Zoning Appeals after the notice of appeal has been filed, that by reason of facts stated in the ~~certificate~~ **permit**, a stay would, in his opinion cause “imminent” peril to life or property. In such case, proceedings shall not be stayed by other than a restraining order granted by the Board of Zoning Appeals or by a court having lawful jurisdiction. The Board shall make a decision on the appeal within ~~ten (10) days~~ **a reasonable time** after the public hearing, **unless additional time is necessary because of unusual circumstances.** ~~Upon hearing~~ Any party **involved in the hearing** **may appear in person or be represented by an attorney.** *Since the time limit is proposed to be amended from ten days to a “reasonable time”, it should be unnecessary to provide for additional time.*

**ARTICLE XI**

**11) Section 1101-1 COMPOSITION AND APPOINTMENT**



~~The Township Zoning Commission shall consist of five (5) members, appointed by the Township Trustees. Each member shall be appointed for a period of three (3) years, except that two (2) of the initial members shall be appointed for one (1) year, and two (2) of the initial members shall be appointed for two (2) years. Each member shall serve until his successor is appointed and qualified. In the event of death or resignation of a member, the Township Trustees shall make the appointment for the duration of the unexpired portion of the term of the member. The members of the Commission shall be residents of the unincorporated territory in the Township and shall receive compensation as determined by the Board of Township Trustees. The secretary of the Zoning Commission shall receive compensation as determined by the Board of Trustees.~~

**See Appendix H of this Resolution (ORC Sec. 519.04)**

**12) Section 1101-3 QUORUM**

The **Township** Zoning Commission shall require a quorum of three (3) members at all of its meetings and the concurring vote of ~~three (3) members~~ **a majority of members present** shall be necessary to ~~ea~~ffect any order.

**13) Addition of Appendices E-H (All new text)**

**Staff Comment:** *It makes a great deal of sense to reference the Ohio Revised Code (ORC) rather than restating it in the Zoning Resolution. However, while it is convenient to provide the pertinent Sections of the ORC in the Appendix, this can cause problems in the future. The Township must be diligent in keeping up with changes to the ORC and update the Appendices as required. It may be preferable to reference the ORC Sections but not place them in the Appendix.*

**Staff Recommendation:** Staff recommends **APPROVAL WITH MODIFICATIONS** for the above referenced text amendments to the Homer Township Zoning resolution subject to Staff Comments.

## **APPENDIX E**

### **COMPLETE TEXT OF SECTION 519.13 OF THE OHIO REVISED CODE**

#### **519.13 Township board of zoning appeals.**

In any township which adopts zoning regulations the board of township trustees shall appoint a township board of zoning appeals composed of five members who shall be residents of the unincorporated territory in the township included in the area zoned. The board of township trustees may appoint two alternate members to the township board of zoning appeals, for terms to be determined by the board of township trustees. An alternate member shall take the place of an absent regular member at any meeting of the board of zoning appeals, according to procedures prescribed by resolution by the board of township trustees. An alternate member shall meet the same appointment criteria as a regular member. When attending a meeting on behalf of an absent member, the alternate member may vote on any matter on which the absent member is authorized to vote. The terms of all regular members shall be of such length and so arranged that the term of one member will expire each year. Each regular or alternate member shall serve until the member's successor is appointed and qualified. Members shall be removable for the same causes and in the same manner as provided by section [519.04](#) of the Revised Code. Vacancies shall be filled by the board of township trustees and shall be for the unexpired term. The members may be allowed their expenses, or such compensation, or both, as the board of township trustees may approve and provide.

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

**APPENDIX F**  
**TEXT OF SECTION 519.14 (A) and (B)**  
**OF THE**  
**OHIO REVISED CODE**

**519.14 Powers of township board of zoning appeals.**

The township board of zoning appeals may:

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

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

## APPENDIX G (Duncan Factors)

The factors to be considered and weighed to determine whether a property owner has encountered practical difficulties are (but are not limited to) the following:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
2. Whether the variance is substantial;
3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
4. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer, garbage);
5. Whether the property owner purchased the property with knowledge of the zoning restrictions;
6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.

**APPENDIX H**  
**COMPLETE TEXT OF SEC. 519.04**  
**OF THE**  
**OHIO REVISED CODE**

**519.04 Township zoning commission.**

The board of township trustees of any township proceeding under sections 519.01 to 519.99 of the Revised Code, shall create and establish a township zoning commission. The commission shall be composed of five members who reside in the unincorporated area of the township, to be appointed by the board. The board of township trustees may appoint two alternate members to the township zoning commission, for terms to be determined by the board of township trustees. An alternate member shall take the place of an absent regular member at any meeting of the township zoning commission, according to procedures prescribed by resolution by the board of township trustees. An alternate member shall meet the same appointment criteria as a regular member. When attending a meeting on behalf of an absent member, the alternate member may vote on any matter on which the absent member is authorized to vote. The terms of the regular members shall be of such length and so arranged that the term of one member will expire each year. Where there is a county or regional planning commission the board may appoint qualified members of such commission to serve on the township zoning commission. Each regular or alternate member shall serve until the member's successor is appointed and qualified. Members of the zoning commission shall be removable for nonperformance of duty, misconduct in office, or other cause by the board, upon written charges being filed with the board, after a public hearing has been held regarding such charges, and after a copy of the charges has been served upon the member so charged at least ten days prior to the hearing, either personally, by registered mail, or by leaving such copy at the member's usual place of residence. The member shall be given an opportunity to be heard and answer such charges. Vacancies shall be filled by the board and shall be for the unexpired term.

Effective Date: 07-22-1998