



What is Zoning?

The division of a political subdivision (municipality, county or township) into districts, and the regulation of land, buildings and structures according to their nature and use, which must be based on a comprehensive plan in a township.

4 Major Areas of Zoning

- Creating and adopting a zoning resolution + map
- Amending a zoning resolution and/or map
- Variances (special exceptions) and/or conditional uses
- Enforcement

Legislative/Administrative Distinction + Why it Matters

Legislative action: action enacting or creating a law, ordinance or regulation taken by the legislative authority (board of trustees)

- + Initial Adoption of Zoning Resolution and Zoning Map
- + Amendments to the Zoning Resolution and Zoning Map
- + May only be taken by the legislative authority; cannot be delegated
- + Broader discretion than administrative actions
- + Subject to referendum



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Legislative/Administrative Distinction + Why it Matters

Administrative action: action executing or administering (enforcing) a law, resolution, or regulation that is already in existence taken by an administrative authority (board of zoning appeals or zoning commission) or a legislative authority acting in an administrative capacity

- + Conditional or Special Use Permits
- + Variances
- + Decision subject to more stringent standards
- + Subject to appeal to common pleas court



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Legislative + Administrative Authorities

Legislative Authorities

- + Board of Township Trustees

Administrative Authorities

- + Zoning Commissions
- + Boards of Zoning Appeals
- + County Planning Commission/Regional Planning Commission



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Initial Adoption of Zoning + Zoning Amendments

- Board of Township Trustees adopts a *'resolution of intent to proceed'* and forms a Township Zoning Commission
- 8% of voters from last gubernatorial election petition the Board for zoning
- Township may become subject to a county zoning plan if there is no township plan and a majority of the township electors approve a proposed county plan
- Special statutory procedure for legislative process of adoption of zoning
- Zoning is a police power and township and may be exercised only as authorized by statute
- Purpose of zoning varies as provided by statute:
 - public health and safety; AND/OR
 - public convenience, comfort, prosperity, or general welfare



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Role of Township Zoning Commissions

- Create initial Zoning Plan following statutory process that includes one or more public hearings, review by County or Regional Planning Commission ("RPC")
- RPC reviews and makes non-binding recommendations to Zoning Commission on legislative zoning matters
- Zoning Plan must be *"in accordance with a comprehensive plan"*
- Recommend Zoning Plan to Board of Township Trustees



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Initial Adoption of Zoning by Legislative Authority

- Board to hold a public hearing on Zoning Commission Recommendation
 - Any change or departure from the zoning text or map recommended by Zoning Commission requires re-submission to the zoning commission for new hearing and recommendations
- Notice must be published at least 30 days in advance of hearing
- Initial Zoning Resolution adopted by:
 - Majority of Board if it follows recommendation of Zoning Commission
 - Unanimous if Zoning Commission Disapproved



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Initial Adoption of Zoning by Legislative Authority

- Initial Zoning Resolution must be approved by the electorate
- Township Zoning Resolution must be filed with the County Recorder **and** County or Regional Planning Commission within 5 working days after the resolution's effective date

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AMENDMENTS to Zoning

How are Amendments Initiated?

Motion of the Zoning Commission

Resolution of the Trustees

Application by 1 or more of owner/lessee of the property

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Follows similar procedure to initial zoning



More on Amendments to Zoning

- Trustees may adopt, deny or modify the Zoning Commission recommendation **within 20 days** after the public hearing
- Majority vote of the Board is required
- Zoning Amendments are subject to referendum
- Zoning may be repealed by:
 - Resolution of the Board repealing the township zoning resolution.
 - Vote of the electorate after filing petition signed by 8% of the township electors voting in the last gubernatorial election



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Administrative Zoning Proceedings

- Determine the legal rights and interests of the applicant or appellant
- Separate and distinct from legislative process
- Applicant has constitutional and statutory rights
- Applicant must be afforded due process



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Types of Administrative Proceedings

- Appeal of decision of zoning inspector
- Conditional Use Permit
- Special Zoning Certificate
- Variance or special exception from zoning standards
 - Use Variance requires showing of substantial hardship
 - Area Variance requires showing of practical difficulties



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Administrative Hearings

- Administrative hearings are adjudicatory hearings, which require notice, hearing, and the opportunity to introduce evidence
- Must be procedural safeguards for the applicant and others directly affected at hearing. **Some examples include:**
 - Testimony under oath
 - Applicant can present witnesses; offer evidence; and cross examine any witnesses in opposition
 - Decision maker must make findings of fact and conclusions of law
 - A record of the proceedings must be kept



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Administrative Determinations Subject to Court Appeal

- Appeal of final administrative determination may be taken within 30 days after the decision is made
- Notice of appeal is filed **with the administrative officer, board or commission making the decision**
- Administrative authority must prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence within forty 40 days after filing a notice of appeal
- The court proceeds as in the trial of a civil action but is confined to the transcript or record if it had sufficient procedural safeguards
- Court may affirm, reverse, vacate, or modify the administrative determination and may remand the cause for further proceedings if it chooses
- Decision of common pleas court is subject to appeal to court of appeals



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Typical Township Staff Activities in Zoning Proceedings

- Receive recommendations from the Zoning Commission for consideration and hearing by the legislative authority
- Keep records of the proceedings of the legislative authority
- Provide notices on the zoning proceedings to applicants, surrounding property owners, and by newspaper publication in all zoning actions before the legislative authority
- Keep resolutions to rezone certain property on file and open for public examination during the thirty-day advertising period
- Receive and process initiative (repeal of zoning) or referendum petitions on zoning



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Typical Activities of Township Staff in Zoning Proceedings

- Receive and handle filing fees and costs associated with zoning applications and procedures
- Pay expenses and costs associated with zoning activities as authorized by the board of trustees
- May have responsibilities as the assistant or clerk for the Zoning Commission, Board of Zoning Appeals or other administrative board, which would include similar activities to those above
- Timely prepare and file with the common pleas court or environmental court (in Franklin County) a transcript of the administrative proceedings when a court appeal is filed
- Provide copies of public records upon request



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Common Governmental Mistakes in the Zoning Process

- **The Sunshine Law Applies:** Ohio's Open Meetings Act and Public Records Act
- All fees + costs must be reasonably related to actual costs
- All required notices should be timely made
- Zoning should be based upon a comprehensive plan
- The hearings should be appropriate for the proceeding: administrative or legislative
- Timely assemble the record when an appeal is taken



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