

BOARD OF TRUSTEES
MARK C. SCHULTE
KENDAL A. TRACY
MARY MAKLEY WOLFF

FISCAL OFFICER
ERIC C. FERRY

INTERIM ADMINISTRATOR
STEVE KELLY



MIAMI TOWNSHIP

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ADMINISTRATION
248-3725
248-3730 (FAX)
COMMUNITY DEVELOPMENT
248-3731
SERVICE DEPARTMENT
248-3728
POLICE DEPARTMENT
248-3721
FIRE/EMS
248-3700
PARKS / RECREATION
248-3727

RESOLUTION 2023-45

The Board of Trustees of Miami Township, Clermont County, Ohio met in regular session on December 4, 2023, with the following members present: Ken Tracy, Mary Makley Wolff and Mark Schulte.

A motion was made to adopt the following Resolution:

**AGREEING TO INITIATE AMENDMENTS TO THE ZONING RESOLUTION
OF MIAMI TOWNSHIP, CLERMONT COUNTY, OHIO (“MTZR”),
DISPENSING WITH THE SECOND READING AND DECLARING AN
EMERGENCY**

WHEREAS, Ohio Revised Code Section 519.12 provides that an amendment to a township zoning resolution may be initiated by the township board of trustees by resolution; and

WHEREAS, through the zone text amendment process the Board will consider eliminating use variances within Miami Township; and

WHEREAS, certain businesses and/or property owners have proposed applying for use variances to the Miami Township Board of Zoning Appeals which exceed the scope of appropriate and reasonable use variances and which requests more closely resemble a zoning amendment; and

WHEREAS, certain businesses and/or property owners have proposed applying for use variances to the Miami Township Board of Zoning Appeals which may pose health hazards through dust and noise creation, and/or which place incompatible and/or unplanned uses within proximity to each other and/or which would divert land inventory to unproductive and/or incompatible uses; and

WHEREAS, authorization for use modifications under a zoning district are more thoroughly vetted through the rezoning process which typically includes three public hearings, including public hearings by separate and independent agencies, and final authorization by the Board of Trustees, as compared to consideration before the Board of Zoning Appeals which normally only includes one hearing; and

WHEREAS, if a change in use is necessary and appropriate for a given zoning district where an unpermitted use is desired, the same change as might be obtained in a use variance process could also be achieved by seeking an amendment to the Zoning Resolution; and

WHEREAS, substantial changes in land use policy such as allowing new and/or different uses in an existing zoning district are correctly vested in the Board of Trustees as opposed to the Board of Zoning Appeals.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of Miami Township, Clermont County, Ohio as follows:

- Section 1. Pursuant to Ohio Revised Code Section 519.12(A)(1), the Board hereby initiates amendments to the MTZR to be made as provided for in the attached Exhibit A which is incorporated herein by reference.
- Section 2. Upon adoption, this Resolution shall be certified to the Miami Township Zoning Commission at its next regularly scheduled meeting for further action in accordance with Ohio Revised Code Section 519.12(A)(2), *et seq.*
- Section 3. The Board finds and determines that all formal actions relative to the passage of this Resolution were taken in an open meeting of this Board, and that all deliberations of this Board and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code.
- Section 4. The Board does hereby dispense with the requirement that this Resolution be read on two separate days, pursuant to Section 504.10 of the Ohio Revised Code, and authorizes the adoption of this Resolution upon its first reading.
- Section 5. This Resolution is declared to be an emergency measure necessary for the preservation of the health, safety and well-being of the residents of the Township for the reason that an emergency situation exists whereby the use variance process has been proposed to be extended to situations more appropriate for the more thorough vetting contained in the rezoning process and to situations which may pose a threat to public health, safety or welfare.
- Section 6. This Resolution shall take effect at the earliest period allowed by law.

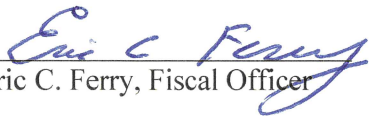
First Reading: December 4, 2023
Second Reading: Dispensed with
Effective: December 4, 2023

On the roll call being called the vote resulted as follows:

Mr. Schulte _____
Mr. Tracy _____
Ms. Wolff _____

Resolution 2023-45 adopted December 4, 2023.

ATTEST:


Eric C. Ferry, Fiscal Officer

APPROVED AS TO FORM:

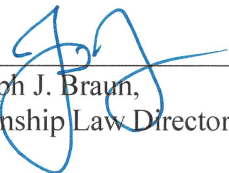

Joseph J. Braun,
Township Law Director

Exhibit A

Editor's note: **bold italics underline** is added language, strikeouts are shown via a line through text.

Chapter 29 of the Zoning Resolution of Miami Township, Clermont County, Ohio shall be amended as follows:

TOWNSHIP BOARD OF ZONING APPEALS

29.01 GENERAL

- A. Township Board of Zoning Appeals is hereby created. Such Board shall consist of five (5) members **and one alternate**, to be appointed by the Township Trustees, who shall be residents of the unincorporated territory of Miami Township included in the area zoned. The terms of all members shall be of such length and so arranged that term of one member will expire each year. Each member shall serve until his successor is appointed and qualified. Members of the Board shall be removable for non-performance of duty, misconduct in office or other cause by Trustees upon written charges having been filed with the Trustees after a public hearing has been held recording such charges, a copy of the charges having been served upon the member so charged ten (10) days prior to the hearing, either personally, or by registered mail, or by the same at his usual place of residence. The member shall be given the opportunity to be heard and answer such charges. Vacancies shall be filled by the Trustees and shall be for the unexpired term.
- B. The Board shall organize and adopt rules in accordance with the provisions of this Resolution. Meetings of the Board shall be held at the call of the Chairman, and at such other times as the Board may determine. The Chairman, or in his absence the acting chairman may administer oaths and the Board may compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Trustees and shall be a public record. The Board shall act **in accordance with its bylaws**. ~~by resolution, in which three (3) members concur and every variance~~

~~or conditional use granted or denied shall be accompanied by a written finding of fact, based on testimony and evidence and specifying the reason for granting or denying the variance or conditional use.~~

- C. Appeals to the Board may be taken by any person aggrieved or by any officer of the Township affected by any decision of the administrative officer. Such appeal shall be taken and processed in accordance with the Ohio Revised Code. Any appeal must be submitted on a Miami Township authorized form. within twenty (20) days after the decision by filing with the Officer from whom the appeal is taken and with the Board a notice of appeal specifying the grounds. The Officer from whom the appeal is taken shall forth with transmit to the Board all the papers constituting the record upon which the action appealed from was taken. The Board shall fix a reasonable time for the hearing of the appeal, give at least ten (10) days notice in writing to the parties in interest, give notice of such public hearing by one publication in one or more newspapers of general circulation in the Township at least ten days before the date of hearing, and decide the same within a reasonable time after it is submitted. Upon the hearing any party may appear in person or by attorney. Any party adversely affected by a decision of the Board may appeal to the Court of Common Pleas of Clermont County, Ohio on the ground that such decision was unreasonable or unlawful. The Court may affirm, reverse, vacate or modify the decision complained of in the appeal.

29.02 POWERS OF THE BOARD

- A. The Board shall have the following powers:
1. To 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 this Resolution.
 2. To authorize, upon appeal, in specific cases, such area variances from the terms of the Zoning Resolution, as will not be contrary to the public interests where owing to special conditions a literal enforcement of the provisions of the Resolution will result in unnecessary hardship, and so that the spirit of the Resolution shall be observed and substantial justice done.
 3. To permit a variation in the yard requirements of any District where there are unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographic or other conditions provided such variation will not seriously affect any adjoining property or the general welfare.
 4. Grant conditional zoning certificates for the use of land, buildings, or other structures if such Certificates for specific uses are provided in the zoning resolution.
 5. Revoke an authorized variance or conditional zoning certificate granted for the extraction of minerals, if any condition of the variance or certificate is violated. The board shall notify the holder of the variance or certificate by mail of its intent to revoke the variance or certificate under 29.02 (D) of this section and of his right to a hearing before the board, within thirty days of the mailing of

the notice, if he so requests. If the holder requests a hearing, the board shall set a time and place for the hearing and notify the holder. At the hearing, the holder may appear in person, by his attorney or other representative, or he may present his position in writing. He may present evidence and examine witnesses appearing for or against him. If no hearing is requested, the board may revoke the variance or certificate without a hearing. The authority to revoke a variance or certificate is in addition to any other means of zoning enforcement provided by law.

B. To authorize by conditional use certificates for the following uses provided the following conditions are met to the satisfaction of the BZA.

1. In the Planned Industrial Park District "I" the extraction of raw materials and related operations in accordance with Ohio Revised Code Section 519.141, provided these conditions are met:

- ~~a. There shall be a buffer zone with a minimum width of 200 feet from non-industrial zones; and~~
- ~~b. Upon completion, abandonment, or other discontinuance of extraction operations, the land shall be restored in accordance with applicable State and Federal Reclamation statutes and/or rules and regulations; and~~
- ~~c. There shall be screening and fencing along the perimeter to prevent unauthorized access to the property; to limit visibility of the operations; and to prevent odor, dust, gas, or similar nuisances arising from the operations from adversely affecting adjacent properties; and~~
- ~~d. The screening and fencing required in 29.02 (b) (1) (c) shall be of materials generally utilized as screening and fencing such as mounding, shrubbery, trees, chain link fencing, and/or wood fencing; and~~
- ~~e. Vehicular truck traffic from the operations over streets, highways, or roads within the unincorporated area of Miami Township shall not delay traffic, leave residue, or create a hazard to other vehicular or pedestrian traffic; and~~
- ~~f. No vehicle shall transport loads in excess of tonnage permitted by State or Federal Regulations; and~~
- ~~g. Operations shall begin no earlier than dawn and cease no later than dusk; and~~
- ~~h. In granting this conditional permit, the Board of Zoning Appeals may impose additional conditions such as time periods for commencement and termination of operations and such other conditions to reduce the adverse effect of this use upon the preservation of the character and development of the surrounding area.~~

2. In the Planned Industrial Park District, "I" airports and/or landing fields provided the following conditions are met:
 - a. In granting a conditional use permit for an airport, the Board of Zoning Appeals shall impose reasonable requirement or restrictions designed to ensure the safety of aircraft in landing and taking off and the safety of persons occupying or using the area and the security of property thereon. In determining these requirements and/or restrictions the Board of Zoning Appeals shall consider the character of the flying operations expected to be conducted at the airport, the percent of slope or grade customarily used in descent or ascent of the aircraft expecting to use the airport with reference to their size, speed, and type, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property is put or is adaptable.
 - b. In determining the "airport hazard area," the Board of Zoning Appeals, prior to approval of a conditional use permit, shall consult with the Division of Aviation, to formulate and adopt an airport approach plan. Each plan shall indicate, the airport hazard area, the circumstances under which structures, objects of natural growth, public highways, and certain uses of land would be airport hazards and the height limits of structures and objects of natural growth and what other restrictions should be contained in the airport zoning regulations. The actions of the Division of Aviation shall be in accordance with Section 4563.08 of the Revised Code.
3. In all districts, parking lots provided the following conditions are met:
 - a. The parking area shall be located on an adjacent property not more than two hundred (200) feet from the boundary of Industrial, Commercial, or Office Districts.
 - b. Parking shall be limited to non-commercial passenger vehicles; and
 - c. The area used for parking meets all requirements of Chapter 23 of this Zoning Resolution.
- C. To the extension of a non-conforming use or building upon a lot or tract of land occupied by such use or building, where such extension is necessarily incident to the existing use, provided, however, that the floor area of such extension or extensions shall not exceed in all fifty (50%) per cent of the floor area of the existing building or buildings devoted to a non-conforming use on the effective date of this Resolution, and provided further, that such extension or extensions shall be undertaken within five (5) years of the effective date of this Resolution or amendments to this Resolution.
- D. In exercising the above-mentioned powers, the Board may reverse or affirm, wholly or partly or may modify the order, requirement, decision or determination

appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Officer from whom the appeal is taken.

- E. In granting conditional use permits, the Board of Zoning Appeals shall provide a specific period of time in which the property owner and/or applicant must commence operation. In no case shall the time period for commencement of operations exceed eighteen (18) months from the date the conditional use permit is granted.

29.03 POWERS NOT GRANTED TO THE BOARD

- A. *The Board shall not have the powers to grant Use Variances. Those desiring a use not permitted in a zoning district under this Resolution may submit an application to the Miami Township Zoning Commission for consideration of a text amendment to allow such use. Said application will proceed through the normal text amendment review process.*