

# Conditional Uses

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# Conditional uses defined

- ▶ Conditional uses are those having some special uniqueness which requires a careful review of their location, design, configuration and special impact to determine in accordance with fixed standards, the desirability of permitting their establishment on a specific site. They are considered provisional in nature and established at the discretion of the Board of Zoning Appeals.



*Anderson Township Zoning Resolution*

# Distinguished from permitted uses

- ▶ Permitted uses
  - as of right
- ▶ Conditional uses
  - at the discretion of the BZA

# The zoning code must specify what uses, if any, are conditional.

- ▶ Usually in explicit list form
- ▶ Can be by cross-reference
  - Example: uses prohibited in “F” Light Industrial District are conditional uses in “G” Heavy Industrial District

# Can have a catch-all item

- ▶ Example:

- “and in general those uses which may be obnoxious or offensive by reason of emission of odor, dust, smoke, gas or noise.” *Crosby Twp. Sec. 20.1.71*

“But zoning resolutions necessarily require some generality to allow flexibility to deal with unforeseen potential uses of the land. While it is arguable that the section could have been drafted more clearly, the words used in the section, when given their ordinary meanings, make clear what kinds of uses are prohibited by the section. We thus conclude that the resolution is not unconstitutionally vague.” *Engel v. Crosby Twp, 2009-Ohio-240, First District Ct of Appeals*

# The phrase “conditional use” may not even be in the zoning code....

- ▶ “No zoning certificate shall be issued for any of the uses ... until and unless such use shall have been authorized by the [BZA] in the manner provided in Article 35.” *Crosby Twp.*

# Sources of authority

- ▶ For townships and counties:
  - The authority to grant or deny conditional use certificates belongs to the BZA, but only if the Zoning Resolution itself creates such a thing as a conditional use. R.C. 303.14(C) and R.C. 519.14(C)

# Sources of authority

- ▶ For municipalities:
  - Council may create an administrative board to administer the process (a BZA), assign the authority to a planning commission, or keep that power for itself, unless specified in the charter.  
R.C. 713.11(A)

# Limits on authority to grant conditional use certificates

- ▶ The BZA does not have authority to grant conditional use certificates independent of the zoning resolution. Rather, a BZA's power to grant a conditional use certificate is no greater than that vested in it by the township or county zoning resolution.
- *Gerzeny v. Richfield Twp* (1980), 62 Ohio St. 2d 339, 405 NE2d 1034

# Wording in the code is everything

- ▶ Example #1: “An application for a conditional use permit shall not be approved unless the following conditions and standards are complied with ....”
  - [for a home professional office in a residential district] “no assistants other than members of the resident family work therein.” *City of Sharonville*
- ▶ Example #2: “In authorizing such Conditional Uses, the BZA shall ... consider the compatibility of such uses with surrounding uses and the effect of such uses upon the health, safety, and morals of the community.” *Anderson Township*

# Procedural requirements – look to the zoning code

- ▶ Notice, public hearing, and full record
- ▶ The application must be open for inspection by the public
- ▶ Witnesses should identify themselves and be sworn in
- ▶ Parties must have an opportunity to cross-examine witnesses
- ▶ The hearing itself must be in open session, but the deliberations may not have to be
- ▶ If deliberations are in executive session, follow proper procedures to go into and out of executive session
- ▶ The vote must be taken in open session and the vote of each BZA member must be noted
- ▶ The decision must be reduced to writing with findings of fact and conclusions of law

# Appealing a BZA decision regarding a conditional use

- ▶ 30 days to appeal (municipalities may specify a different appeal deadline)
- ▶ Notice of Appeal and Praecipe for the Record
  - Served upon BZA and Court of Common Pleas

# Conduct of the appeal in the Court of Common Pleas

- ▶ The court is confined to the BZA's record – the court does not hear witnesses or take other new evidence
- ▶ Exceptions listed in R.C. 2506.07, if:
  - The transcript is incomplete
  - The appellant was not permitted to:
    - Present his position
    - Offer and examine witnesses and present evidence
    - Cross-examine witnesses
    - Offer evidence to refute his opponents

- ▶ Other exceptions permitting additional evidence
  - Testimony was not under oath
  - Appellant was unable to present evidence by reason of lack of subpoena
  - The BZA failed to make or file supporting conclusions of fact

