



Zoning Text Amendment Guilford Township

Meeting:	June 6, 2018
Applicant:	Guilford Township Zoning Commission (ZC)
Hearing:	TBD (ZC)
Amendments:	The ZC proposes the following amendments: <ul style="list-style-type: none">• Add four new terms to Section (§) 3 Definitions• Add new § 4.13 Roadside Stands to §4 General Regulations• Edit § 5.4 Setbacks for Roadside Stands• Add new § 9-II.b.42 Signs to § Conditional Zoning Certificates
Reviewer:	Rob Henwood
Recommendation:	DISAPPROVAL

Proposal: On April 17, 2018 Guilford Township Zoning Commission Secretary, David Houk sent an email to the Department of Planning Services (DPS) staff requesting a review of the following changes to the Zoning Resolution as proposed by the ZC (new text is underlined, text to be deleted is shown as ~~strikethrough~~, and Staff Comments are *italicized*):

SECTION 3: DEFINITIONS

3.23 a - FARM MARKET OR STAND: shall be a structure no less than 144 square feet or larger than 20 x 24 feet that is fixed permanently to the earth either by a foundation or posts.

- *The styles used to write numbers and units should be utilized consistently throughout the zoning text. In this case the size should be stated utilizing the same method of measurement; either structure area or exterior dimensions.*
- *Definitions should not contain zoning regulations, they should be strictly descriptive. Regulations should be located in other areas of the zoning resolution. The size regulations pertaining to “farm market or stand” should be moved to § 5: Agriculture.*
- *The definition should be consistent with the language utilized in Ohio Revised Code (ORC) § 519.21.*

3.55 - SIGN: Any object, device, display, or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, design, symbols, fixtures, or colors, illumination, or projected images no larger than 16 square feet. *Numbers and units.*

3.55a – REAL ESTATE SIGN: Shall be a non-illuminated, temporary sign for selling the property on which it is located and shall be no larger than 16 square feet.

- *Delete this section as this category or type of sign “real estate” cannot be determined without an evaluation of the content of the sign. This violates the requirement that sign regulations be content neutral.*¹

¹ *Sign Regulation after Reed versus Town of Gilbert, Arizona.* Alan Weinstein. Presentation made at the October 27, 2017 Cleveland Planning and Zoning Workshop, Cleveland Section of American Planning Association, Ohio Chapter. https://www.dropbox.com/sh/3aiy16unqc9n77v/AAB-mGjBTVL2MLGpXgjZv3cfa?dl=0+&preview=1A-Sign+Regulations_Weinstein.pdf

- *Numbers and units.*

3.55b – ILLUMINATED SIGN: Any internal or external lights or projected images cannot violated existing township lighting regulations. Reference – 9.42

- *Definitions should not contain zoning regulations.*
- *The ZC should consider utilizing a definition similar to the following “A sign with an artificial light source incorporated internally or externally for the purpose of illuminating the sign.”*
- *The style used to write directions to the reader regarding references within the zoning text should be utilized consistently.*

3.55c – ELECTRONIC MESSAGE SIGN: shall be a sign with a static message that does not scroll, flash, revolve or have intermittent illumination. They shall have technology that will adjust the sign’s brightness in direct correlation with ambient light conditions. Ref. – 9.42

- *Definitions should not contain zoning regulations.*
- *The proposed definition indicates that an electronic message sign shall display a static message; this is illogical as the purpose for electronic message sign is to provide a sign that may change its displayed content and message. If the ZC wishes to prohibit “changeable copy” signs, then they should do so and they should be prepared to explain why such signs are prohibited. If the ZC would like to permit such signs then the ZC should consider utilizing a definition similar to the following:*

Changeable Copy Sign: A sign whose informational content can be changed or altered by manual, electro-mechanical, or electronic means.

Changeable signs include the following types:

1. *Manually Activated: Signs whose alphabetic, pictographic, or symbolic informational content can be changed or altered by manual means.*
2. *Electronically Activated: Signs whose alphabetic, pictographic, or symbolic informational content can be changed or altered on a fixed display surface composed of electrically illuminated, digital, or mechanically driven changeable segments.*

- *Section references.*

SECTION 4: GENERAL REGULATIONS

4.13 - ROADSIDE STANDS: *Terminology should be utilized consistently throughout the zoning resolution. The proposed definition for this use is “Farm Market or Stand” but the section utilizes “Roadside Stands.” Staff recommends utilizing the term “Farm Market” to be consistent with ORC § 519.21.*

It is the intention of this section to be able to sell primarily agricultural product produced on the premises at a roadside stand.

- a - Temporary structures only; to be a minimum of twenty-five (25) feet from the road right-of-way.

- *ORC § 519.21 does not provide townships with the authority to require that farm markets be temporary structures; delete this language.*
- *Edit the remaining portion of the subsection to read “Farm markets shall be setback a minimum of 25 feet from the road right-of-way.”*
- b - Roadside stand is to be removed after seasonal sales. ORC § 519.21 does not provide the township with the authority to require farm markets to be removed after seasonal sales; delete this language.
- c - Maximum size of the stand will be 144 square feet.
- d - Off road parking shall be provided.
- e - Signs as permitted in the Zoning District

Reference: Conditionally permitted uses; R-6.2; 19

- *The regulations pertaining to “farm market or stand” should be moved to § 5: Agriculture.*
- *The size requirements proposed in § 3.23a. are not consistent with those proposed in 4.13; § 3.23a. proposes farm market size minimum of 144 square feet and a maximum size equivalent to 480 square feet while § 4.13 proposes farm market size maximum size of 144 square feet.*
- *Numbers and units.*
- *Section references.*

SECTION 5: AGRICULTURE

- 5.4** - The minimum setback for permanent farm market buildings or permanent roadside stands, shall be behind the front of the main structure, but not closer than 50 feet from the road right-of-way, shall be fifty (50) feet. Temporary road side stands shall be no closer than 25 feet from the road right-of-way.
- *Requiring the farm market to be located behind the main or primary structure may be unreasonably burdensome. If a homestead is located a long way from the road right-of-way it does not seem reasonable to require the farm market be located behind it. Staff suggests the ZC include a 50 foot setback from the road right-of-way for farm markets.*
 - *ORC § 519.21 does not provide townships with the authority to require that farm markets be temporary structures; delete this language and references to permanent farm market buildings or stands.*
 - *Numbers and units.*

SECTION 9: CONDITIONAL ZONING CERTIFICATES

II - CONDITIONALLY PERMITTED USES: REGULATIONS

- 42.** Signs shall not exceed 16 square feet or be larger than 4x4 feet except for real estate signs which may not exceed 4 square feet. All signs (except real estate signs) must maintain proper setbacks, are considered structures and must have a conditional zoning permit.
- A - Lighted signs must meet the following conditions as applicable:

- 1 - Be internally lighted.
- 2 - Be lighted externally by no more than two spotlights on either side of the sign.
- 3 - No lighting shall constitute a nuisance to a person of normal sensibilities, and shall not in any way impair safe movement of traffic on any street or highway.
- 4 - Exterior lighting shall be designed and maintained so that glare is not cast on any adjacent properties, regardless of use, or any adjacent streets or highways. (Ref. 4.18 - General Lighting 2)

- ***It is not reasonable to require all signs be conditionally permitted uses.***
- ***Staff recommends that the ZC draft a new chapter for sign regulations. All regulations pertaining to signs should be included in this new chapter. Include sign regulations from all sections and districts.***
- ***Delete the sections of text that refer to “real estate signs” as this category or type of sign cannot be determined without an evaluation of the content of the sign.***
- ***Numbers and units.***

Comments:

1. The writing of numbers and units of measure in the text is not handled consistently. One style for writing numbers and units should be used consistently; words only (nineteen feet), numbers or digits only (19 feet), or a combination of words, numbers, and units (nineteen feet (19')).
2. Noted sign regulations expert Alan Weinstein of the Cleveland-Marshall College of Law recommends that communities follow the “On its Face Rule” when considering sign regulations, “if you have to read the message displayed to determine how a sign is regulated, then that regulation is content-based.” Weinstein indicates that sign regulations which do not utilize “content or message neutrality” are at risk of First Amendment violations and vulnerable to law suits.
3. According to Stuart Meck and Kenneth Pearlman authors of *Ohio Planning and Zoning Law*, “townships must strictly follow the procedures and standards in state statutes when administering their zoning regulations.”²
4. ORC § 519.21(C) Powers not conferred on township zoning commission by chapter states that;

Such sections [ORC 519.21] confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit in a district zoned for agricultural, industrial, residential, or commercial uses, the use of any land for:

1. *A farm market where fifty per cent or more of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year. However, a board of township trustees, as provided in section 519.02 of the Revised Code, may regulate such factors pertaining to farm markets as size of the structure, size of parking areas that may be required, set back building lines, and egress or ingress, where*

² Meck, Stuart and Kenneth Pearlman. *Ohio Planning and Zoning Law: 2017 Edition*. Thomson Reuters, 2017.

such regulation is necessary to protect the public health and safety...

[and further;]

4. *Agritourism. However, a board of township trustees, as provided in section 519.02 of the Revised Code, may regulate such factors pertaining to agritourism. except farm markets as described in division (C)(1) of this section, as size of a structure used primarily for agritourism[,] size of parking areas that may be required, setback building lines for structures used primarily for agritourism[,] and egress or ingress where such regulation is necessary to protect public health and safety.*

Nothing in division (C)(4) of this section confers power on a township zoning commission, board of township trustees, or board of zoning appeals to require any parking area to be improved in any manner, including requirements governing drainage, parking area base, parking area paving, or any other improvement. [Clarification added by the author.]

In summary, the Board of Trustees may regulate the following aspects of farm markets located in agricultural, industrial, residential, or commercial districts where such regulation is necessary to protect public health and safety:

- a. Size of the structure.
- b. Size of parking areas.
- c. Set back building lines.
- d. Egress or ingress.

The provisions of ORC 519.21 do not, however, provide the Board of Trustees the authority to require any parking area to be improved in any manner, including drainage, base, paving, or any other improvement.

5. It is not reasonable to require all signs be conditionally permitted uses. Signs do not meet the criteria established by the purpose statement for land uses to be considered for conditional zoning certificates. The purpose statement indicates that;

... the functions and characteristics of an increasing number of new kinds of land uses combined with conclusive experience regarding some of the older, familiar kinds of uses call for a more flexible and equitable procedure for properly accommodating these activities in the community.

It is standard practice to have sections of Zoning Resolutions dedicated to signs. It is not reasonable to require the additional requirements associated with conditionally permitted uses to signs particularly since several types of signs are already permitted by right in various zoning districts. As indicated above staff recommends that the ZC draft a new chapter specific to signs and that includes all specific regulations pertaining to signs.

Staff further recommends that the following language recommended by sign regulations expert Alan Weinstein also be included in a future proposed sign regulations:

- a. A strong purpose statement. Weinstein recommends the following sample language:
 - i. *To promote the creation of an attractive visual environment that promotes a healthy economy by:*
 - A. *Permitting businesses to inform, identify, and communicate effectively; and*
 - B. *Directing the general public through the use of signs while maintaining attractive and harmonious application of signs on the buildings and sites.*
 - ii. *To protect and enhance the physical appearance of the community in a lawful manner that recognizes the rights of property owners by:*
 - A. *Encouraging the appropriate design, scale, and placement of signs.*
 - B. *Encouraging the orderly placement of signs on the building while avoiding regulations that are so rigid and inflexible that all signs in a series are monotonously uniform.*
 - C. *Assuring that the information displayed on a sign is clearly visible, conspicuous, legible and readable so that the sign achieves the intended purpose.*
 - iii. *To foster public safety along public and private streets within the community by assuring that all signs are in safe and appropriate locations.*
 - iv. *To have administrative review procedures that are the minimum necessary to:*
 - A. *Balance the community's objectives and regulatory requirements with the reasonable advertising and way finding needs of businesses.*
 - B. *Allow for consistent enforcement of the Sign Regulations.*
 - C. *Minimize the time required to review a sign application.*
 - D. *Provide flexibility as to the number and placement of signs so the regulations are more responsive to business needs while maintaining the community's standards.*
- b. A message substitution clause. Weinstein recommends the following sample language:

The owner of any sign which is otherwise allowed by these sign regulations may substitute non-commercial copy in lieu of any other commercial or noncommercial copy. This substitution of copy may be made without any additional approval or permitting, provided that the size of the sign is not altered. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or favoring of any particular noncommercial message over any other non-commercial message. This provision prevails over any more specific provision to the contrary.

Recommendation: DPS staff recommends the Planning Commission **DISAPPROVE** the proposed amendments to §§ 3, 4.13, 5.4, & 9-II.b.42 of the Guilford Township Zoning Resolution for the following reasons:

1. The proposed amendments contain regulations that utilize content based language.
2. The proposed amendments contain regulations that are prohibited by ORC § 519.21.
3. The proposed amendments requiring all signs be conditionally permitted uses are not reasonable and are inconsistent with existing sign regulations.

If the ZC is interested, DPS staff would welcome the opportunity to assist in the preparation of zoning amendments. DPS staff also encourages the ZC to submit text proposals to for informal review prior to formally submitting for Planning Commission review.