

**ARTICLE 11****ZONING BOARD OF APPEALS****Section 11.1. Creation and Purpose.**

There is hereby established a Zoning Board of Appeals which shall perform its duties and exercise its powers as provided in Sections 601 through 607 (MCL 125.3601 through MCL 125.3607) of the Michigan Zoning Enabling Act, Public Act 110 of 2006, in such a way that the objectives of this Ordinance shall be observed, public safety secured and substantial justice done. The Zoning Board of Appeals, as herein created, is a body of limited powers. The Zoning Board of Appeals shall have the following specific powers and duties:

- 11.1.1. **PURPOSE.** To hear and decide appeals where it is alleged there is an error of law in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this Ordinance, and to hear and decide appeals where there are practical difficulties or unnecessary hardships to the property in the way of carrying out the strict letter of this Ordinance so that the spirit of the Ordinance shall be observed, public health and safety secured, and substantial justice done.
- 11.1.2. **INTENT** In consideration of all appeals for variances the Zoning Board of Appeals shall review each case individually as to its applicability to each of the following standards so that the proposed variance or new land use:
- A. Will be of such location, size and character that it will be in harmony with the appropriate and orderly development of the surrounding neighborhood and applicable regulations of the zoning district in which it is to be located.
  - B. Will be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved, taking into consideration vehicular turning movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and access of off-street parking and provisions for pedestrian traffic, with particular attention to minimizing child-vehicle contacts in residential districts;
  - C. Will be designed as to location, size, intensity, site layout and periods of operation of any such proposed use to eliminate any possible nuisance emanating there from which might be noxious to the occupants of any other nearby uses, whether by reason of dust, noise, fumes, vibrations, smoke or lights;
  - D. Will be such that the proposed location and height of buildings or structures and location, nature and height of walls, fences and landscaping will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value;
  - E. Will relate harmoniously with the physical and economic aspects of adjacent land uses as regards prevailing shopping habits, convenience of access by prospective patrons, continuity of development, and need for particular services and facilities in specific areas of the Township;
  - F. Is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
  - G. Will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.

- 11.1.3 MEMBERSHIP AND TERMS OF OFFICE. The Zoning Board of Appeals shall consist of five (5) members and serve for appointed terms as follows:
- A. The first member shall be any member of the Township Planning Commission, other than the Township Board member.
  - B. The second member shall be a member of the Township Board, appointed by the Township Board, for a period of his term of office. This member cannot serve as Chairman to the Zoning Board of Appeals.
  - C. The remaining members shall be selected and appointed by the Township Board from among the electors, residing in the unincorporated area of the Township for a period of three (3) years except that when first appointed terms may be for less than three years to allow for staggered terms. No elected officer of the Township, nor any employee or any person having a contractual relationship with the Township Board may serve simultaneously as a member so appointed, or as an employee of the Zoning Board of Appeals.
  - D. Members of the Zoning Board of Appeals shall be removable by the Township Board for non-performance of duty or misconduct in office upon written charges and after public hearing.
  - E. Any vacancy shall be filled by the appointing authority for the unexpired term.
  - F. The first two (2) members shall be appointed for their term of office. The remaining members shall be appointed to terms of office for three (3) years.
- 11.1.4. AUTHORITY. The Zoning Board of Appeals shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files and other evidence pertinent to the matters before it. In hearing and deciding appeals, the Zoning Board of Appeals shall have the authority to grant such variances as may be in harmony with the general purpose and intent of this Ordinance, so that public health, safety and welfare are secured, and substantial justice done, including the following:
- A. Interpret the provisions of the Ordinance in such a way as to carry out the intent and purpose of the plan, as shown upon the Zoning Map fixing the use districts accompanying this Ordinance, where street layout actually on the ground varies from the street layout as shown on the map aforesaid. In case of any question as to location of any boundary line between zoning districts, the Zoning Board of Appeals shall interpret the zoning map after recommendation from the Township Planning Commission. The power of authority to alter or change the Zoning Ordinance or Zoning Map is reserved to the Township Board, as is provided by Law.
  - B. Permit the erection and utilization of a building, or an addition to an existing building, of a public service corporation or for public utility purposes, in any permitted district to a greater height or of larger area than the district requirements herein established. The Zoning Board of Appeals may also permit the location in any use district of a public utility building, structure or use if the Board shall find such use, height, area, building or structure reasonably necessary for the public convenience and service.
  - C. Permit the modification of the off-street motor vehicle parking space or loading space requirements where, in the particular instance, such modifications will not be inconsistent with the purpose and intent of such requirements.

- D. Permit such modification of the height, lot area, yard setbacks, floor area and lot width regulations as may be necessary to secure an appropriate improvement of a lot which is of such shape or size, or so located with relation to surrounding development or physical characteristics, that it cannot otherwise be appropriately improved without such modification, provided that modification of lot area regulations shall be permitted only in instances where the nature of the soil and drainage is such that there is sufficient area for safe water supply and sanitary disposal of waste (unless central water distribution and/or sanitary sewage are provided). Whenever the Zoning Board of Appeals determines that the same are necessary in order to render a decision, it may require the applicant to submit a topographical survey or the results of percolation test certified by a registered engineer or land surveyor.
  - E. Permit temporary buildings and uses for period not to exceed ninety (90) days.
  - F. Make determinations regarding the expansion, classification and changes in use on Non-conforming lots, uses and structures, as allowed and required by the Zoning Ordinance.
- 11.1.5. **CONDITIONS.** The Zoning Board of Appeals, by majority vote, 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 Zoning Administrator from whom the appeal is taken. In granting a variance the Zoning Board of Appeals may impose such conditions or limitations as it may deem necessary to comply with the spirit and purposes of this Ordinance.
- 11.1.6. **STAY OF APPEAL.** An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Zoning Board of Appeals, after Notice of Appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by the Circuit Court, on application, on notice to the Zoning Administrator and on due cause shown.

### **Section 11.2. Procedure.**

An appeal may be taken to the Zoning Board of Appeals by any person, firm or corporation, or by any officer, department, board or bureau affected by a decision of the Zoning Administrator in the enforcement of the Zoning Ordinance.

- 11.2.1. **APPLICATION.** An application shall be submitted to the Township Office a minimum of 22 days prior to the next regularly scheduled meeting date, specifying the grounds for the appeal and the section of the ordinance being appealed. The appellant or applicant shall include surveys, plans or other information necessary for the Board of Zoning Appeals to thoroughly investigate the matter before it.
- A. The Zoning Administrator shall provide the Zoning Board of Appeals with copies of all of the information related to the proposed variance or appeal prior to the next immediately available meeting.
  - B. A fee shall be paid to the Township at the time the notice of appeal is filed; said fees shall be set by resolution of the Township Board.
- 11.2.2. **NOTICE.** Following receipt of a written request concerning a variance, an interpretation of the zoning ordinance, or an appeal of an administrative decision, the zoning board of appeals shall set a public hearing for the next immediately available regularly scheduled meeting, with public notice to be given as follows:
- A. **Publication.** The Township shall publish a notice of the public hearing in a newspaper of general circulation in the local unit of government not less than 15 days before the date of the public hearing, which shall include the following information:
    1. Describe the nature of the request.

2. Indicate the individual properties that are the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.
3. State when and where the public hearing for the request will be held.
4. State when and where written comments will be received and the information reviewed, concerning the request.

B. Mail Notice. Should a variance request be submitted regarding a specific piece of property, a notice of public hearing shall be sent which shall include the information as required for the Publication. The notice shall be sent by regular first class mail or personally delivered at least 15 days before the date of the public hearing to the following:

1. To the applicant for and the owner(s) of, the individual properties that are the subject of the request.
2. To all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the regardless of whether the property or occupant is located in the zoning jurisdiction.

11.2.3. PUBLIC HEARINGS. All meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such times as such Zoning Board of Appeals may determine. All meetings of the Zoning Board of Appeals shall be open to the public and shall be subject to the following:

- A. The Zoning Board of Appeals shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files and other evidence pertinent to the matters before it.
- B. Standards.
  1. All decisions must insure that the spirit of the zoning ordinance is observed, public safety secured and substantial justice done.
  2. Variances. To obtain a dimensional variance from the requirements of the zoning ordinance the applicant must show practical difficulty by demonstrating the following:
    - A. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.
    - B. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that it is the least allowed that would give substantial relief and be consistent with justice to others.
    - C. The plight of the owner is due to unique circumstances of the property; and
    - D. The problem was not created by an action of the applicant but existed at the time of the adoption of the ordinance or was the result of an action outside of the control of the applicant, such as a road widening.
  3. No decision regarding a question of the interpretation of the Zoning Ordinance may be made by the Board prior to receiving a written opinion on the matter from the municipal attorney.
- C. Action.
  1. Deny or table the request for additional information if the facts in the case do not establish beyond a reasonable doubt that the spirit of the zoning ordinance is observed, public safety secured and substantial justice done.
  2. Approve the request, with or without additional conditions deemed necessary to insure compliance with the stated purposes and intent of the Ordinance.
  3. A statement of facts shall be recorded containing the findings and conclusions relative to the basis for the decision.
  4. A list of any conditions imposed to insure compliance with the stated purposes and intent of the Ordinance shall be made part of the official record.

- D. Records. The Zoning Board of Appeals shall keep minutes of its proceedings showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its findings, proceedings at hearings, and all other official actions. Once a request has been heard by the Zoning Board of Appeals and a final action taken, three (3) copies of the application and plans will be marked approved or denied and distributed as follows:
1. The record of all the required information shall be immediately filed with the office of the Township Clerk and shall be kept for a permanent public record.
  2. One copy of the decision shall be forwarded to the applicant.
  3. A copy of the decision shall be forwarded to the zoning administrator for appropriate action.

### **Section 11.3 Effect of Approval**

11.3.1 APPROVAL PERIOD. No order of the Zoning Board of Appeals permitting the erection or alteration of a building or use shall be valid for a period longer than one (1) year, unless:

- A. A building permit for such erection or alteration is obtained within such period, and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.
- B. Such use is established within such period; provided, however, that such order shall continue in force and effect if a building permit for said erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with such permit.

11.3.2. APPEALS. Any party aggrieved by a decision of the Zoning Board of Appeals may appeal to the Circuit Court of St Clair County. An appeal under this section shall be filed within 30 days after the Zoning Board of Appeals has forwarded their decision to the applicant in writing or approves the minutes of its decision, whichever occurs first.

## **SECTION 2. SEVERABILITY.**

This Ordinance and each of the various parts, sections, subsections, sentences, phrases and clauses hereof are hereby declared to be severable. If any part, section, subsection, sentence, phrase or clause is determined to be invalid or unenforceable by a court of competent jurisdiction, it is hereby provided that the remainder of this Ordinance shall not be affected thereby and shall remain in full force and effect.

**SECTION 3. REPEAL OF ORDINANCES IN CONFLICT HEREWITH.**

Any and all Ordinances of the Township of St. Clair or any parts or provisions thereof, to the extent that they are contrary to or inconsistent with the provisions of the within Ordinance, are hereby expressly repealed.

**SECTION 4. RATIFICATION.**

All other provisions of the Zoning Ordinance of St. Clair Township St Clair County, Michigan except as herein modified or amended, are hereby expressly ratified and affirmed.

**SECTION 5. CERTIFICATION**

The foregoing is a true and complete copy of an Ordinance adopted by the Township Board of St. Clair Township, County of St. Clair, State of Michigan, at a regular meeting held on the 4<sup>th</sup> day of December, 2006, and public notice of said meeting was given pursuant to and in accordance with the requirements of the Michigan Zoning Enabling Act, Act No. 110 of 2006 and Act No. 110 of the Public Acts of 1976, as amended, being the Open Meetings Act, and the Minutes of said meeting have been or will be made available as required by said Act.

Members Present: 7

Members Absent:

It was moved by Clerk Skonieczny and supported by Treasurer Miskus to approve the Proposed Ordinance.

Members voting yes: 7

Members voting no: 0

JOYCE A. SKONIECZNY  
ST. CLAIR TOWNSHIP CLERK

PUBLISHED: 12/27/06  
EFFECTIVE: 1/3/07