

## **ARTICLE 19 BOARD OF APPEALS**

### **19.01 CREATION AND FEES**

There is hereby created under the Township Rural Zoning Act (1943 PA 184, as amended) and its successor statute, the Michigan Zoning Enabling Act (2006 PA 110, as it may from time to time be amended) a township zoning board of appeals referred to in the Clyde Township Zoning Ordinance as the “board of appeals.” Such board will consist of three members, who will be appointed by the township board as provided by statute.

*[amended 8-9-06; 11-28-14]*

### **19.02 ALTERNATE MEMBERS**

The township board may appoint not more than two alternate members for the same term as regular members to the zoning board of appeals. An alternate member may be called by the chairman of the zoning board of appeals or his or her designee to serve as a regular member of the zoning board of appeals in the absence of a regular member if the regular member is absent from or will be unable to attend one or more meetings. An alternate member may also be called by the chairman of the zoning board of appeals or his or her designee to serve as a member to decide a case in which the regular member has abstained for reasons of conflict of interest. The alternate member appointed will serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the zoning board of appeals. *[amended 8-9-06]*

### **19.03 JURISDICTION AND POWERS**

The board of appeals will have all powers and jurisdiction granted by the zoning act, all powers and jurisdiction prescribed in other articles of the ordinance, and the following specific powers and jurisdiction:

- A. The jurisdiction and power to hear and decide appeals from and review any order, requirement, decision, or determination made by the zoning administrator. The Board of Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination as they think ought to be done, and to that end it:
  - 1. Will have all the powers of the zoning administrator.
  - 2. May issue or direct the issuance of a permit.

- B. The jurisdiction and power to act upon all questions as they may arise in the administration and enforcement of this ordinance, including interpretation of the zoning map.
- C. The board of appeals shall have the power to grant nonuse variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance where there are practical difficulties 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. In making this determination, the zoning board of appeals shall find that **ALL** of the following standards are met:
1. That the variance will not permit the establishment within a zoning district of any use which is not permitted by right within the district.
  2. That compliance with the strict letter of the zoning ordinance would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity with the zoning ordinance unnecessarily burdensome.
  3. That a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the surrounding area, or, in the alternative, that a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
  4. That the hardship asserted by the property owner by way of justification for a variance is due to unique circumstances of the property. The circumstances or conditions submitted by the applicant to justify the variance relief must pertain to the property at issue, and not the personal circumstances, as provided under Michigan law, of the applicant and/or other occupants or users of the property. *[amended 1-28-17]*
  5. That the hardship asserted by way of justification for the variance is not self-created.
  6. That, in granting a variance, the zoning board of appeals is insuring that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done.  
*[entire subsection amended 8-9-06]*

#### **19.04 HEARING OPEN TO PUBLIC** *[section added 8-9-06]*

The board of appeals shall make no determination in any case until after a public hearing conducted by the board of appeals has been held. Notice of the public hearing shall be given in accordance with applicable statutory requirements. At the hearing, a party may appear in person or by agent or attorney.

#### **19.05 ADOPTION OF RULES OF PROCEDURE**

The board of appeals will fix rules and regulations governing its procedures sitting as the board of appeals. Said rules and regulations will be available to the public and will be in conformance with the terms of this ordinance and the zoning act.

*[re-numbered and amended 8-9-06]*

#### **19.06 CONDITIONS** *[re-numbered and amended 8-9-06]*

- A. In granting a variance, the board of appeals may impose and attach such conditions as are otherwise allowed under the Michigan Zoning Enabling Act (2006 PA 110, as it may from time to time be amended).
- B. The decision of the ZBA shall be final. However, a person having an interest affected by the decision of the ZBA may appeal to the Circuit Court. Upon appeal, the Circuit Court shall review the record in accordance with the requirements of the Zoning Enabling Act. The court may affirm, reverse, or modify the decision of the ZBA, or may remand the decision to the ZBA for further hearings or action. *[amended 1-28-17]*
- C. No variance granted by the ZBA shall be valid for a period longer than twelve (12) months, from the date of its issuance if not used. However the applicant may, upon written request, seek up to one (1) twelve (12) month extension of the variance from the ZBA. The ZBA may grant an extension provided that the original circumstances authorizing the variance have not changed and that the circumstances creating the need for the extension were reasonably beyond the control of the applicant. *[amended 1-28-17]*

#### **19.07 RE-SUBMISSION** *[added new 1-28-17]*

No variance request which has been decided by the ZBA shall be submitted for reconsideration within a one (1) year period from the date of the original application unless the ZBA finds that at least one (1) of the following conditions exists:

- A. That the conditions involving all of the reasons for the original denial have been significantly altered; or
- B. That new conditions or circumstances exist which change the nature of the original request.