

CLEARWATER TOWNSHIP

Amendment 3 to Ordinance 22 The Zoning Ordinance

At a regular meeting of the Clearwater Township Board, held on November 18, 2015, the following amendment was enacted:

An amendment to Article 26 (Zoning Board of Appeals), of Ordinance 22 (The Zoning Ordinance), to bring the language of the Article into fuller compliance with the MZEA (PA 110 of 2006 as amended). This amendment modifies Sections 26.07 (MEETINGS), 26.09 (STAY PENDING APPEAL), 26.10 (HEARINGS AND DETERMINATION OF APPEALS), deletes existing Sections 26.12 (APPLICATION) and 26.13 (LIMITATIONS), and replaces them with Sections 26.12 (APPEALS) and 26.13 (APPEALS REGARDING SEXUALY ORINETED BUSINESSES), and adds Section 26.14 (DETERMINATIONS NOT FINAL). The full text of the resulting Article 26 (ZONING BOARD OF APPEALS) is herewith presented.

ARTICLE XXVI ZONING BOARD OF APPEALS

26.01 CREATION

There shall be a Township Zoning Board of Appeals consisting of no fewer than three (3), nor more than five (5) members.

A. The first member of the Zoning Board of Appeals shall be a member of the Planning Commission.

B. The remaining members of the Zoning Board of Appeals shall be selected from the electors of the Township of Clearwater residing outside of the incorporated cities and villages, and shall be representative of the population distribution and interests present in the Township.

1. One member may be a member of the Township Board, but that member may not serve as chairman of the Zoning Board of Appeals.
2. An employee or contractor of the Township Board may not serve as a member of the Zoning Board of Appeals.

26.02 TERM OF OFFICE

The term of each member shall be three (3) years except that of the members first appointed; two (2) shall serve for two (2) years and the remaining members for three (3) years.

A. The Township Board is required to appoint a successor within one (1) month after the expiration of the term of the preceding member, and

B. Any vacancy in office shall be filled for the remainder of the unexpired term.

26.03 REMOVAL FROM OFFICE

Any member of the Zoning Board of Appeals may be removed by the Township Board for non-performance of duty or misconduct in office, but only after written charges are made and a public hearing is held.

A. Any member who has a conflict of interest on any matter before the Zoning Board of Appeals shall disqualify himself/herself from voting thereon, and failure to do so constitutes misconduct in office.

26.04 OFFICERS

The Zoning Board of Appeals must elect a chairman and secretary from among its members and any other officers or committees as necessary.

- A. Officer elections must be at least every two (2) years.

26.05 COMPENSATION

The Township Board must appropriate annually in advance the total to be paid to the members of the Zoning Board of Appeals. Each member is to receive such per diem compensation and actual expenses incurred in the discharge of duties as may be determined by the Township Board.

26.06 QUORUM

The Zoning Board of Appeals may not conduct any business unless a majority of its membership is present.

- A. A majority vote of the total membership is necessary to reverse any administrative decision or grant a variance or make a decision in favor of an applicant.

26.07 MEETINGS

A. Meetings of the Zoning Board of Appeals shall be:

1. Held at the call of the chairman and at such other times as the Zoning Board of Appeals in its rules or procedure may specify.
2. Open to the public.

B. The order of business for public hearings shall be as follows: All public hearings held by the ZBA must be held as part of a regular or special meeting of the ZBA. The following rules of procedure shall apply to public hearings held by the ZBA. [All steps of these rules of procedure shall apply to hearings on a request for a dimensional variance. However, in the case of a hearing for an appeal of an administrative decision, or a hearing concerning interpretation of the zoning ordinance or map, not all steps shall apply.]:

1. Chairperson opens public hearing and announces the subject.
2. Pledge of Allegiance.
3. Roll call: members and township officials.
4. Approval of agenda.
5. Chairperson calls for disclosure by all members of the ZBA of any actual or potential conflicts of interests concerning any item on the agenda.
6. Approval of minutes.
7. Chairperson summarizes procedures/rules to be followed during the hearing.
8. Applicant presents request/notice of appeal to be reviewed.
9. Township zoning administrator presents a summary or analysis of the request.
10. Persons wishing to comment on the request are recognized. [Public comments should be directed to the chairperson and not to the applicant or people in the audience.]
11. Chairperson closes public hearing (or announces the continuation of the public hearing at another specified time and date if additional pertinent information must be obtained).

12. Chairperson reads each standard, pertinent findings of fact are presented and discussed, and a roll call vote is taken on whether or not the requested variance meets the standard.
13. If each standard is determined to be met by a majority vote, the variance is approved; otherwise, the variance is denied.
14. Chairperson is responsible for completing ZBA decision form within thirty (30) days and making copies available to the township office and the appellant.
15. Statement of next meeting or hearing.
16. Adjournment.

To ensure that everyone has the opportunity to speak, the ZBA may elect to limit the time permitted for each person to speak, except that the applicant may be permitted additional time as the chairperson allows. The chairperson may also elect to allow persons to speak only once, until all persons have had the opportunity to speak, at which time the chairperson, in his/her discretion, may permit additional comments.

C. The Zoning Board of Appeals shall maintain a record of its proceedings which shall be filed in the office of the Township Clerk and shall be a public record. Minutes shall be available for review by the public as follows:

1. Proposed minutes: Not more than eight (8) business days after the meeting.
2. Approved minutes: Not more than five (5) business days after the meeting at which they were approved.

26.08 DUTIES; POWERS; AND APPEALS

A. The Zoning Board of Appeals shall act upon all questions as they may arise in the administration of this Ordinance, including the interpretation of the Zoning Map and Text, and may fix rules and regulations to govern its procedures sitting as Zoning Board of Appeals.

B. It shall hear and decide:

1. Appeals from any order, requirement, decision or determination made by the Zoning Administrator charged with enforcement of this Ordinance, excepting any issuance or prosecution of a municipal civil infraction citation, notice, or action.
2. All matters referred to it or upon which it is required to pass under this Ordinance.
3. All appeals from any Special Use Permit.
4. Appeals for variances from the provisions of this Ordinance.

C. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of administrative official, or to decide in favor of an applicant any matter upon which they are required to pass under this Ordinance.

D. An appeal may be filed by any person aggrieved or by an office, department, board or bureau of the Township, County, or State.

E. The grounds for every determination shall be stated in the motion voted upon in reaching that determination.

F. The Zoning Board of Appeals CANNOT rezone property or amend the Zoning Ordinance.

G. Township Zoning Board of Appeals MAY NOT grant Use Variances.

H. Individual members of Zoning Board of Appeals shall acquaint themselves with all relevant information for making a determination including individual on-site inspection prior to meeting.

26.09 STAY PENDING APPEAL

An appeal to the zoning board of appeals stays all proceedings in furtherance of the action appealed. However, if the body or officer from whom the appeal is taken certifies to the zoning board of appeals after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, proceedings may be stayed only by a restraining order issued by a circuit court. (MCL 125.3604(3))

26.10 HEARINGS AND DETERMINATION OF APPEALS

A. The Zoning Board of Appeals shall fix a reasonable time for the hearing of an appeal and give due notice thereof to the parties and decide the same within a reasonable time. Not less than fifteen (15) days notification, by mail, of the time and place of the meeting shall be given to:

1. The owners of real property within three hundred (300) feet of the subject property;
2. Residents of all one and two-family dwellings within three hundred (300) feet of the subject property;
3. The Zoning Administrator; and
4. The applicant.

B. Upon the hearing, any party may appear in person or by agent or by attorney.

26.11 STANDARDS FOR REVIEW OF A NON-USE (DIMENSIONAL) VARIANCE APPLICATION

The standards for review are intended to ensure that variances are granted in only those circumstances where truly unusual conditions are present on a property. To obtain a variance, the applicant must prove that a unique aspect of the property itself creates a *practical difficulty* (there is no *hardship* test for non-use variances) in complying with the ordinance and must provide reasonable evidence that all of the following conditions exist to establish the *practical difficulty*:

- A. The property is subject to exceptional or extraordinary circumstances or conditions that do not apply generally to other properties in the same zoning district (e.g., unique dimensional, topographical, and/or structural conditions) thus presenting the possibility of a *practical difficulty* for this particular property.
- B. The requested variance is necessary to alleviate a situation which qualifies as a *practical difficulty*; i.e., without the variance the owner is deprived of a minimum practical legal use of his/her property such as is possessed by residents of other properties in the same zoning district. (The possibility of increased financial return is of itself not sufficient to warrant a variance.)
- C. The requested variance is the minimum variance necessary to mitigate the *practical difficulty*.
- D. The *practical difficulty* resulting in the need for the requested variance was not created by any action of the current property owner.

E. The requested variance will not be detrimental to adjacent property and the surrounding neighborhood.

CONDITIONS

The Zoning Board of Appeals may impose conditions on a variance that may make the difference in meeting one of the standards. For example, fencing or landscaping may reduce the potential negative impact of permitting a building closer to an adjacent property line.

26.12 APPEALS

All appeals over which the Zoning Board of Appeals has jurisdiction shall be filed in writing at the township office at least thirty (30) days prior to the appeal hearing date. An appeal can be heard at either 1) a regularly scheduled Zoning Board of Appeals meeting, or 2) a specially-scheduled meeting pre-arranged among the applicant, the Zoning Board of Appeals chair, and the zoning administrator. The fee shall be determined by the Township Board.

Any appeal from an administrative decision must be made within thirty (30) days from the date of the decision constituting the basis for the appeal. Upon hearing the appeal, the Zoning Board of Appeals may affirm or modify the ruling, decision, or determination, or, in lieu thereof, make such other or additional determination as it shall deem proper under the circumstances.

The Zoning Board of Appeals shall return its decision in writing within thirty (30) days after a request or appeal has been heard, unless additional time is agreed upon by all parties concerned.

26.13 APPEALS REGARDING SEXUALLY ORIENTED BUSINESSES

All appeals to the Zoning Board of Appeals which relate to sexually oriented businesses will be processed pursuant to this Article to the extent the provisions of this Article do not conflict with ARTICLEXXIV, Section 24.02.J. If any provision of this Article does conflict with ARTICLEXXIV, Section 24.02.J, the latter shall control.

26.14 DETERMINATIONS NOT FINAL

A decision of the Zoning Board of Appeals may not be overturned by the Township Board or any other township agency or official. Any party aggrieved by a decision of the Zoning Board of Appeals may appeal the decision within thirty (30) days to the appropriate circuit court. (MCL 125.3605 and 125.3606)

Approved November 20, 2015

Effective December 10, 2015