

Effective 2/1/13

**Amendment 1 to Clearwater Township Ordinance 22, the Zoning Ordinance,
Article XXVI – Zoning Board of Appeals**

The following amendment was adopted at a regular meeting of the Clearwater Township Board on January 16, 2013:

This amendment to Article XXVI will modify Sections 26.07, 26.11, 26.14, and 26.16.

Section 26.07 – Rationale for Modification: The Michigan Zoning and Enabling Act of 2006 (PA 110 of 2006, as amended), states in MCL 125.3604(7) that “The ordinance shall establish procedures for the review and standards for approval of all types of variances.” In Clearwater Township, Kalkaska County, only dimensional variances are permitted. To meet this requirement, we propose to adopt language that will expand the current section called that discusses meetings, and to revise the language for the section on standards for review.

Resolved that Section 26.07 of Ordinance 22 be repealed and replaced with the following:

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 regular meetings and public hearings shall be as follows:

1. Meetings – The order of business for meetings shall be as follows:

- i. Chairperson calls the meeting to order and announces the subject of the meeting: quarterly, variance, interpretation or administrative decision.
- ii. Pledge of Allegiance.
- iii. Roll call: members and township officials.
- iv. Approval of agenda.
- v. Chairperson calls for disclosure by all members of the ZBA of any actual or potential conflicts of interests concerning any item on the agenda.
- vi. Approval of minutes.
- vii. Public comment and open discussion for issues not on the agenda.
- viii. Other matters to be reviewed by the ZBA.
- ix. Report of planning commission representative and zoning administrator.
- x. Next meeting or hearing.
- xi. Adjournment.

2. Public Hearings – 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.]:

- i. Chairperson opens public hearing and announces the subject.
- ii. Pledge of Allegiance.
- iii. Roll call: members and township officials.

- iv. Approval of agenda.
- v. Chairperson calls for disclosure by all members of the ZBA of any actual or potential conflicts of interests concerning any item on the agenda.
- vi. Approval of minutes.
- vii. Chairperson summarizes procedures/rules to be followed during the hearing.
- viii. Applicant presents request/notice of appeal to be reviewed.
- ix. Township zoning administrator presents a summary or analysis of the request.
- x. 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.]
- xi. 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).
- xii. 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.
- xiii. If each standard is determined to be met by a majority vote, the variance is approved; otherwise, the variance is denied.
- xiv. Chairperson and secretary sign and date ZBA decision form and the chairperson assigns appeal number.
- xv. Statement of next meeting or hearing.
- xvi. 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.

Sections 26.11 and 26.16 – Rationale for Modification: The ZBA, at its meeting of July 9, 2012, reviewed and revised the language for its standards of review. The Planning Commission has considered the revised language and concurs with the ZBA.

Resolved that Sections 26.11 and 26.16 be repealed and replaced by the following:

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 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.

Section 26.14 – Rationale for Modification: As this Section stands, an applicant could resubmit his or her variance request repeatedly, which violates sections 605 and 606 of the MZEA (PA 110 of 2006), being MCL 125.3605 and 125.3606. Once a variance request has been denied by the ZBA, the applicant has recourse only to the circuit court, not to a rehearing of the same matter by the ZBA.

Resolved that Section 26.14 be repealed in its entirety.

Amendment #1 to Ordinance #22 The Zoning Ordinance was enacted at a regular meeting of the Clearwater Township Board, at which time a quorum was present, on January 16, 2013. This amendment becomes effective eight days after publication in a newspaper of general circulation within the Township

Larry Niederstadt, Supervisor

Julie Vance, Clerk

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 Pat Gray
 Deputy Clerk*