



CLAY TOWNSHIP ZONING BOARD OF APPEALS APPLICATION FOR HEARING

LOCATION OF PROJECT: _____

OWNER: _____ PHONE: _____

ADDRESS: _____

APPLICANT: _____ PHONE: _____

ADDRESS: _____

PARCEL #: _____ LOT #: _____ CURRENT ZONING DISTRICT _____

LEGAL DESCRIPTION: _____

I HAVE READ ARTICLE XXVII OF THE CLAY TOWNSHIP ZONING ORDINANCE 126 REGARDING THE ZONING BOARD OF APPEALS. MY APPEAL IS TO REQUEST A VARIANCE OF SECTION _____

I BELIEVE MY REQUEST SHOULD BE GRANTED FOR THE FOLLOWING REASONS:

- PRACTICAL DIFFICULTY
- DEPRIVE THE OWNER RIGHTS BY OTHERS IN SAME DISTRICT
- WILL NOT ALTER ESSENTIAL NEIGHBORHOOD CHARACTER
- CONDITIONS & CIRCUMSTANCES UNIQUE TO THE PROPERTY NOT CREATED BY OWNER

ATTACH EIGHT (8) COPIES OF A SURVEY (WHICH IS REQUIRED TO APPLY FOR A HEARING BEFORE THE ZONING BOARD OF APPEALS), LOT DIAGRAM, BUILDING PLANS OR ANY OTHER DOCUMENTARY MATERIAL PERTINENT TO YOUR CASE, ALONG WITH THE APPLICATION FEE OF \$250.00 (NON-REFUNDABLE) WHEN THIS APPEAL IS FILED. ALL DRAWINGS MUST BE TO SCALE.

AFFIDAVIT BY OWNER OR AUTHORIZED AGENT

THE UNDERSIGNED BEING DULY SWORN, DEPOSES AND SAYS THAT THE FOREGOING STATEMENTS AND ANSWERS HEREIN CONTAINED AND ALL ACCOMPANYING INFORMATION AND DATA ARE IN ALL TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF.

SUBSCRIBED AND SWORN TO BEFORE ME THIS

_____ DAY OF _____ 20_____

Applicant's Signature Date

NOTARY PUBLIC, ST. CLAIR COUNTY, MI

MY COMMISSION EXPIRES: _____

I HEREBY GRANT PERMISSION FOR MEMBERS OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS TO ENTER THE ABOVE DESCRIBED PROPERTY FOR THE PURPOSES OF GATHERING INFORMATION RELATED TO THIS APPLICATION OR REQUEST.

Applicant's Signature Date

ANY DECISIONS OF THE ZONING BOARD OF APPEALS FAVORABLE TO THE APPLICANT WILL REMAIN VALID AS LONG AS THE INFORMATION OR DATA RELATING THERETO ARE FOUND TO BE CORRECT AND THE CONDITIONS UPON WHICH THE RESOLUTION WAS BASED ARE MAINTAINED.

\$ _____ FEE PAID

Clay Township Treasurer Date

Zoning Board of Appeals

Supplemental Information

Please complete each of the following items which correspond to the findings required for variance approval in Section 27.05, subsections 3 a, b, c, d, e of the Zoning Ordinance. It is your responsibility to provide a detailed and complete response to each approval standard. **THIS SUPPLEMENTAL SHEET MUST BE COMPLETED AND RETURNED WITH YOUR APPLICATION AT LEAST TWO WEEKS BEFORE YOUR SCHEDULED MEETING DATE. FAILURE TO MEET THIS DEADLINE COULD RESULT IN POSTPONEMENT OF YOUR VARIANCE REQUEST.**

1. **Practical Difficulty:** A practical difficulty exists on a site generally as physical characteristics such as exceptional narrowness, shallowness, shape or area; presence of floodplains or exceptional topographic conditions and strict compliance with the zoning ordinance would prevent the owner from using the site for a permitted use or would render conformity unnecessarily burdensome. Meeting this standard requires the variance to be related to the characteristics of the property and not to the personal situations of the applicant.

2. **Unique Situation:** The demonstrated practical difficulty results from special or extraordinary circumstances that exist which are peculiar to the land, structure or building involved and are not generally applicable to other lands, structures or buildings in the same district.

3. **Not Self - Created:** The conditions resulting in a variance request cannot be self - created and would have existed regardless of ownership of the property.

4. **Substantial Justice:** The variance would provide substantial justice by granting property rights similar to those properties in the vicinity and in the same zoning district. It would not confer special privileges denied to other properties in the zoning district. The result of the variance should not be potentially harmful to adjacent properties such as restricted access or view, noise, lights or any other effect not normally experienced by property owners in similar circumstances.

5. **Not Contrary to the Ordinance:** The requested variance should not undermine the purpose and intent of the zoning ordinance as it relates to adjoining properties. In this context, the variance requested must be the minimum necessary to afford relief.

**ARTICLE XXVII
ZONING BOARD OF APPEALS**

Section 27.01 Statement of Purpose.

The purpose of this Article is to ensure that the objectives of this Ordinance are fully and equitably achieved, that a means be provided for competent interpretation of this Ordinance, that flexibility be provided for in the strict application of this Ordinance, that the spirit of the Ordinance be observed, public safety secured, and substantial justice done.

Section 27.02 Creation and Membership.

1. **Establishment:** A Zoning Board of Appeals (ZBA), first established by Ordinance 25 of 1967, is hereby retained in accordance with the Michigan Zoning Enabling Act, PA 110 of 2006, as amended. The Zoning Board of Appeals shall consist of five (5) members: a member of the Planning Commission; and the remaining members appointed by the Township Board from the electors residing in the Township. A member of the Township Board may serve on the Zoning Board of Appeals but shall not serve as the chairperson. The Zoning Administrator or other employee or contractor of the Township Board may not serve on the Zoning Board of Appeals.
2. **Alternate Members:** The Township Board may appoint two alternate members for the same term as regular members of the Zoning Board of Appeals. An alternate member may be called to serve as a regular member of the Zoning Board of Appeals in the absence of a regular member if a regular member will be unable to attend one or more meetings of the Zoning Board of Appeals. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals.
3. **Terms of Office:** Members shall be appointed for three (3) year terms except in the case of Planning Commission and Township Board members, whose terms shall be limited to the time they are members of the Planning Commission or Township Board. When members are first appointed, the appointments may be for less than three years to provide for staggered terms. A successor shall be appointed not more than one (1) month after the term of the preceding member has been expired. Vacancies for unexpired terms shall be filled for the remainder of the term. Members may be reappointed. A member of the Zoning Board of Appeals may be removed by the legislative body for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

Section 27.03 Organization.

1. **Rules of Procedure:** The Zoning Board of Appeals shall adopt rules of procedure for the conduct of its meetings and the implementation of its duties. The Zoning Board of Appeals shall annually elect a chairperson, a vice chairperson, and a secretary.
2. **Meetings and Quorum:** Meetings of the Zoning Board of Appeals shall be held at the call of the chairperson and at such other times as the Zoning Board of Appeals' Rules of Procedure may specify. A majority of the total membership of the Board shall comprise a quorum. The Township Board of Appeals shall not conduct official business unless a majority of the regular members of the Board is present. All meetings shall be open to the public and conducted pursuant to the requirements of the Open Meetings Act, PA 267 of 1976.

3. Oaths and Witnesses: The chairperson may administer oaths and compel the attendance of any witness in order to ensure a fair and proper hearing.
4. Records: The minutes of all meetings shall contain the grounds for every determination made by the Zoning Board of Appeals including all evidence and data considered, all findings of fact and conclusions drawn by the Zoning Board of Appeals for every case, along with the vote of each member and the final ruling on each case. The Zoning Board of Appeals shall file its minutes in the office of the Township Clerk.
5. Legal Counsel: An attorney for the Township shall act as legal counsel for the Zoning Board of Appeals pursuant to procedures established by the Township Board.

Section 27.04 Jurisdiction.

The Zoning Board of Appeals shall act upon questions as they arise in the administration of this Ordinance. The Zoning Board of Appeals shall perform its duties and exercise its powers as provided in the Michigan Zoning Enabling Act, PA 110 of 2006, as amended. The Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property, nor make any change in the terms or intent of this Ordinance, but does have the power to act on those matters for which this Ordinance provides an administrative review, interpretation or variance. Within this capacity, the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of the Zoning Administrator, Planning Commission, or any official administering or enforcing the provisions of this Ordinance. This jurisdiction shall not include the hearing of appeals related to special land uses or planned unit development (PUD) decisions.

Section 27.05 Authorized Appeals.

The Zoning Board of Appeals shall hear the following specified categories of appeals in accordance with the following standards:

1. Administrative Review: The Zoning Board of Appeals shall hear and decide appeals where it is alleged by the aggrieved party that there is an error in any order, requirement, permit, decision or refusal made by the Zoning Administrator or by any other official or by the Planning Commission in administering or enforcing the provisions of this Ordinance. This authority shall not include review of Special Use or PUD decisions of the Planning Commission.
2. Interpretation of the Ordinance: The Zoning Board of Appeals shall hear and decide upon requests to:
 - a. Interpret the provisions of this Ordinance when it is alleged that certain provisions are not clear or that they could have more than one meaning. In deciding upon such request, the Zoning Board of Appeals shall ensure that its interpretation is consistent with the intent and purpose of the Ordinance, the Article in which the language in question is contained and all other relevant provisions in the Ordinance. All interpretations made by the ZBA shall be forwarded to the Planning Commission by the member of the Planning Commission who also serves on the ZBA. Interpretations shall be maintained as an appendix attachment to the zoning ordinance.
 - b. Determine the precise location of the boundary lines between zoning districts when there is dissatisfaction with a decision made by the Zoning Administrator.

3. Variance: The Zoning Board of Appeals shall have the power to authorize specific variances from site development requirements such as lot area and width regulations, building height and bulk regulations, yard width and depth regulations, off-street parking and loading space requirements, and sign requirements of this Ordinance, provided that all the required findings listed below are met and the record of proceedings of the Zoning Board of Appeals contains evidence supporting each conclusion.
 - a. The strict enforcement of the provisions of this Ordinance would cause a practical difficulty and deprive the owner of rights enjoyed by all other property owner owning property within the same zoning district.
 - b. There are conditions and circumstances unique to the property which are not similarly applicable to other properties in the same zoning district.
 - c. The conditions and circumstances unique to the property were not created by the owner, or his predecessor in title, within the time following the effective date of the provisions alleged to adversely affect such property.
 - d. The requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district.
 - e. The requested variance will not be contrary to the spirit and intent of this Zoning Ordinance.
4. A variance under this Ordinance shall not be granted which permits a use not otherwise permitted within the zoning district, upon the property for which a variance is being requested.
5. Conditions: The ZBA may impose conditions upon an affirmative decision. The conditions may include, conditions necessary to ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to ensure compatibility with adjacent land uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall do all the following:
 - a. Be designed to protect natural resources, the health, safety, and welfare, as well as social and economic well being of those who will use the land use or activity under consideration, residents, and landowners immediately adjacent to the proposed land use, or activity, and the community as a whole.
 - b. Be related to valid exercise of the police power and purposes which are affected by the proposed use or activity.
 - c. Be necessary to meet the intent and purpose of the zoning regulations; be related to the standards established in the Ordinance for the land use or activity under consideration and be necessary to ensure compliance with those standards.
 - d. The conditions imposed shall be recorded in the record of the approval action and shall remain unchanged except upon the mutual consent of the approving authority and the landowner. The approving authority shall maintain a record of changes granted in conditions.
6. Rehearing: No rehearing on an application denied by the Zoning Board of Appeals shall be reconsidered except upon the grounds of newly discovered evidence or a falsehood previously relied upon which is found upon inspection by the Zoning Board of Appeals to be valid. A rehearing shall be processed in the same manner as the original application, including payment of the required fee. A request for rehearing shall be made on behalf of the applicant by either the Township Board or Zoning Board of Appeals within eight (8) days. No land use permit shall be granted which relies upon a variance before eight (8) days following the decision of the Zoning Board of Appeals have expired.

7. Reapplication: After eight (8) days following a decision by the Zoning Board of Appeals, no application for a variance, Ordinance interpretation, or appeal which has been denied, wholly or in part, by the Zoning Board of Appeals shall be resubmitted for a period of one (1) year from the date of the last denial, except on proof of changed conditions found upon inspection by the Board to be valid.

Section 27.06 Procedures.

1. Notice of Appeal: Appeal requests for Ordinance interpretation and requests for variances may be made to the Zoning Board of Appeals by a person aggrieved, or by an officer or department of the Township, by filing a written Notice of Appeal with the Township Clerk on forms established for that purpose and accompanied with such information as is necessary to decide such request. At a minimum, eight (8) copies of the information required to be submitted for a land use permit (either a plot plan or site plan) shall be submitted. Upon receipt of a Notice of Appeal, the Township Clerk shall promptly transmit the records concerning the appealed action, as well as any related information to the chairperson of the Zoning Board of Appeals. Any appeal from the ruling of the Zoning Administrator concerning the enforcement of the provisions of this Ordinance shall be filed within ten (10) days after the date of the Zoning Administrator's decision.
2. Hearing: Upon receipt of a Notice of Appeal, or of an application for Ordinance interpretation, or variance request, the chairperson of the Zoning Board of Appeals shall schedule a reasonable time and date for a public hearing.
3. Notice of Hearing: When the chairperson of the Zoning Board of Appeals schedules a public hearing, notice of the hearing shall be provided as required by State law and any applicable Township policies and procedures.
4. Appearance: Upon the hearing, any party may appear in person or by agent or attorney. The Zoning Board of Appeals may recess such hearing from time to time, and, if the time and place of the continued hearing are announced at the time of adjournment, no further notice shall be required.
5. Stay: An appeal shall postpone all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Zoning Board of Appeals after notice of appeal has been filed with he or she, that by reason of facts stated in the certificate a postponement would, in the Zoning Administrator's opinion, cause imminent peril to life or property, in which case the proceedings shall not be postponed except by a restraining order, which may be granted by the Zoning Board of Appeals, or, on application, by court of record.
6. Performance Guarantee: In authorizing any variance, or in granting any temporary dwelling permits, the Zoning Board of Appeals may require that a cash deposit, certified check, irrevocable bank letter of credit, or surety bond acceptable to the Township covering the estimated cost of conditions or improvements associated with a project for which zoning approval is sought, be deposited with the Township Clerk to insure faithful conformance with the conditions or completion of the improvements. Whenever a cash deposit is required, the Township shall establish a reasonable rebate of such cash deposit based on a proportion of work completed versus the total work required. This section shall govern whenever a financial guarantee is required by authority of this Ordinance notwithstanding any provisions to the contrary.
7. Administrator's 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, on application, by court of record.

8. **Fee:** A fee as established by the Township Board, shall be paid to the Township Treasurer at the time the petitioner files an application with the Zoning Board of Appeals. The purpose of such fee is to cover, in part, the necessary advertisements, investigations, hearing records and other expenses incurred by the Board in connection with the appeal. No fee shall be charged if the Zoning Administrator, Planning Commission, or Township Board is the initiating party.
9. **Decision:** The Zoning Board of Appeals shall render its decision within sixty (60) days of filing of a Notice of Appeal, or application for Ordinance interpretation or variance, unless in the opinion of Zoning Board of Appeals, an extension of time is necessary to review information pertinent to making the decision. The concurring vote of a majority of the total membership of the Zoning Board of Appeals shall be necessary to reverse an order, requirement, decision, or determination of the administrative official or body, or to decide in favor of the applicant on any matter upon which they are required to pass under or to effect any variation in this Ordinance. Any decision of the Zoning Board of Appeals shall not become final until the expiration of eight (8) days from the date of entry of such order, unless the Board shall find the immediate effect of such order is necessary for the preservation of property or personal rights and shall so certify on the record.

Section 27.07 Review by Circuit Court.

The decision of the Zoning Board of Appeals shall be final. A party aggrieved by the decision may appeal to the circuit court for the county in which the property is located as provided under Section 6.06 of Public Act 110 of the Public Acts of Michigan 2006, as amended.