

ARTICLE 13 ZONING BOARD OF APPEALS

§13.01 CREATION OF ZONING BOARD OF APPEALS

- A. Pursuant to the provisions of and under the authority of Act 207 of the Public Acts of 1921, as amended (being MCL 125.581, et. seq.), there is created the City of Clio Zoning Board of Appeals. The Board shall adopt rules to provide for the conduct of its meetings.
- B. The City of Clio Zoning Board of Appeals consists of five (5) members. One member of the Zoning Board of Appeals must be a representative of the City of Clio Planning Commission. The members of the Zoning Board of Appeals must be electors of the City of Clio. The members of the Zoning Board of Appeals will be compensated at a rate to be determined, from time to time, by the City Commission. The Chairperson of the Zoning Board of Appeals is authorized to administer oaths and compel attendance of witnesses by §601(8), (9) and (10) and §602(1) and (2) of PA 110
- C. The terms of Zoning Board of Appeals members appointed under this ordinance shall be staggered so that not more than two terms shall come up for reappointment per year. Terms will be for 3 years. All appointed members will hold office until their successors are appointed and take office. Any person appointed to replace a member in mid-term shall fill the remainder of that term before re-appointment. All terms expire September 30. After a public hearing held by the City Commission, a member may be removed by the mayor for inefficiency, neglect of duty, or malfeasance in office.
- D. Three (3) members (regular or alternate) constitute a quorum for the transaction of business. Alternate members will be called to serve on the Zoning Board of Appeals as regular members in the absence of the regular members or when a regular member is unable to serve because of a conflict of interest. An alternate member once hearing a case will serve on the case until a final decision has been made. Alternate members hearing a case have the same voting rights as a regular member of the Board of Appeals.

§13.02 MEETINGS

- A. The concurring vote of a majority of the members on the Board is required to reverse an order, requirement, decision or determination of an administrative official or body charged with enforcing this ordinance, to approve a non-use variance or to decide in favor of an applicant on any other matter referred to it by whatever means.
- B. The Board shall meet on a date and time determined by it, but no sooner than ten (10) days nor later than forty-five (45) days after the City receives an application upon which they need to act. The City will give due notice of such application to all residents and property owners within 300 feet of the premises in question regardless of municipal boundaries. The notice will be delivered personally or by first class mail addressed to the respective owner(s) and tenant(s) at the address given in the last assessment roll at least fifteen (15) days before the date of the meeting at which the appeal will be acted upon. In such cases an affidavit of the mailing will be maintained. In all cases, the City shall send a notice of the hearing to the applicants no less than fifteen (15) days prior to the hearing. The City will post the notice of appeal in a prominent location on the premises in question. The content of the notices shall

describe the nature of the request, indicate the property that is the subject of the request by street address, state when and where the request will be considered and indicate when and where written comments can be received per §103 (3) of PA 110.

- C. At the hearing, the aggrieved party or the official, department or board may appear in person or be represented by an agent or attorney. The Zoning Board of Appeals will decide the appeal no later than sixty (60) days from the date the application was filed with the City or unless extended by the aggrieved party and the board, by mutual consent, or no later than ten (10) days after the meeting at which the appeal was considered, whichever is first unless extended by mutual agreement of the aggrieved party and the Board.
- D. The Zoning Board of Appeals must state the grounds for their decision and the Zoning Board of Appeals decision is final. However, a person having an interest affected by the Zoning Ordinance may appeal to the circuit court.
- E. The Board shall deliver by personal server or first class mail its decision to the applicant in writing within seven (7) days of the date of the meeting at which the decision was made.

§13.03 POWERS OF THE ZONING BOARD OF APPEALS

The Zoning Board of Appeals shall have the authority to:

- A. Grant variances from the requirements of this Ordinance.
- B. Interpret the zoning ordinance and the zoning map.
- C. Hear appeals of administrative decisions including approval or denial of a site plan.
- D. Permit a legal non-conforming use of land or structures to be changed to another non-conforming use under the procedures contained in Sections 5.04 and 5.05 of this Ordinance.

§13.04 VARIANCES

The Zoning Board of Appeals shall have the power to authorize variations to any requirement of this ordinance which can be expressed in terms of numbers. The Zoning Board of Appeals may not authorize a use variance. An application for a variance that is denied may not be resubmitted for one year except due to the finding of new information or a relevant change in circumstances. In consideration of all variances, the Zoning Board of Appeals shall review each case individually as to its compliance with each of the following standards and may only approve variance requests which comply with all of them:

- A. The standard for which the variance is being granted would unreasonably prevent the owner from using property for a permitted purpose or would render conformity unnecessarily burdensome.
- B. The variance would do substantial justice to the applicant as well as to other property owners in the zoning district and a lesser relaxation of the standard would not provide substantial relief and be more consistent with justice to others.

- C. The problem is due to circumstances unique to the property and not to general conditions in the area.
- D. The problem that resulted in the need for the variance was not created by the applicant or previous owners of the property.
- E. Issuance of the variance would still ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done.

§13.05 APPEALS

These appeals procedures are instituted to hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of the City Zoning Ordinance.

- A. An appeal shall be filed with the officer from whom the appeal is taken and with the City Zoning Board of Appeals, through the City Zoning Administrator specifying the grounds for the appeal.
- B. Applications for appeals of administrative actions shall be submitted to the Zoning Administrator within twenty one (21) days of the date of such actions. In the case of an action by the Planning Commission, the twenty one (21) day period starts on the day the minutes of the meeting are approved.
- C. The officer from whom the appeal is taken shall forthwith transmit to the City Zoning Board of Appeals all papers constituting the record upon which the appeal is taken.
- D. An appeal stays all proceedings in furtherance of action appealed from, unless the officer from whom the appeal is taken certifies to the City Zoning Board of Appeals after the notice of appeal shall have been filed with them, that by reason of facts stated in the certificate, a stay would in their opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the City Zoning Board of Appeals, or by the circuit court, on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
- E. The City Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirements or determination appealed from and in making an order, requirement, decision or determination, shall have the powers of the officer or body from whom the appeal is taken. The ZBA shall only reverse an administrative decision if a preponderance of the evidence indicates that administrative decision did not comply with the requirements or standards of this ordinance.

§13.06 INTERPRETATION

- A. Interpretation. The Zoning Board of Appeals may interpret provisions of this ordinance as outlined below. Each such interpretation shall establish the precedent for future treatment of the issue being addressed. To achieve the objective of consistent enforcement of this Ordinance, whenever an interpretation question arises which has been addressed previously

by the Zoning Board of Appeals, the earlier interpretation shall apply without requiring further action by the ZBA. The Zoning Administrator shall keep a concise record of all interpretations made by the Zoning Board of Appeals to facilitate such reference.

1. The Zoning Board of Appeals may determine the precise location of the boundary lines between zoning districts.
2. The Zoning Board of Appeals may classify any activity which is not specifically mentioned in Article 4- District Regulations for any Zoning District as a use by right or special use provided that said classification shall be consistent with the classification of similar uses and with the purpose and intent of each Zoning District. In carrying out this interpretation, the Zoning Board of Appeals may not interpret a specific use as being included in a broader class of uses if that specific use is listed separately in other zoning districts.
3. The Zoning Board of Appeals may determine the off-street parking and loading space requirements of any use for which these requirements are not determinable using the information provided for this purpose in article 4, District Regulations.
4. The Zoning Board of Appeals may interpret any portion of this Ordinance when the Zoning Administrator is unable to clearly determine its intent or effect.

§13.07 TIME LIMITS

- A. **Deadline to commence construction/use.** A building permit for a project with a Zoning Board of Appeals approved variance shall be filed with the City Building Inspector within one (1) year from the date of Zoning Board of Appeals approval of a variance. If a building permit is not filed within one (1) year, Zoning Board of Appeals approval of the variance shall expire. In cases where construction is not required, the approved use of land or buildings must have commenced within one (1) year.
- B. **Deadline for completion.** A project with a Zoning Board of Appeals variance approved shall be completed within the time frame of the building permit issued. If an occupancy permit is not granted within the time frame of the building permit issued, Zoning Board of Appeals approval of the variance shall expire.

§13.08 CONDITIONS

- A. The Zoning Board of Appeals may place conditions on an affirmative decision when such conditions:
 1. Would 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.
 2. Would protect the natural environment and conserve natural resources and energy.
 3. Would ensure compatibility with adjacent uses of land.

4. Would promote the use of land in a socially and economically desirable manner.
- B. In determining appropriate conditions, the Zoning Board of Appeals shall ensure that:
1. There is a rough proportionality between the cost to the developer to provide an improvement in relationship to the impact to be mitigated.
 2. There is a reasonable connection between the condition imposed and the impact it is mitigating.

§13.09 PERFORMANCE GUARANTEES

Performance guarantees may be authorized by the Zoning Board of Appeals per the requirements of Section 8.08.