



## ORDINANCE NO. 2013 - 02

### AN ORDINANCE TO AMEND ORDINANCE 2006-07, ZONING ORDINANCE

WHEREAS, the City Council of the City of Clay, Alabama adopted Ordinance 2006 – 07 on March 27, 2006, and

WHEREAS, the provisions of this Ordinance, including the Zoning Map, may from time to time be amended, supplemented, changed, modified or repealed by the City Council in accordance with the procedures stated in Section 1105 of Ordinance 2006 - 07; and

WHEREAS, this Ordinance has been previously amended by Ordinances 2007-12, 2008-10, 2008-11, 2008-12, 2009-09, 2010-02, 2011-03, 2011-04, 2012-06, and 2013-01; and

WHEREAS, the Planning and Zoning Commission held a public hearing on January 24, 2013 in accordance with Section 1107 of Ordinance 2006 – 07; and

WHEREAS, the Planning and Zoning Commission recommends the attached amendments to Article 12 of Ordinance 2006 – 07:

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Clay, Alabama that based on the recommendation of the Planning and Zoning Commission, Article 12 of Ordinance 2006 – 07 is hereby amended as attached.

ADOPTED AND APPROVED this 18<sup>th</sup> Day of February, 2013.

\_\_\_\_\_  
Charles K. Webster  
Mayor

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Ronnie Dixon  
City Manager



## Ordinance 2013-02 Attachment

### ARTICLE 12. ZONING BOARD OF ADJUSTMENT

#### Section 1201 Establishment and Procedures

**1201.01.** Creation and Membership. A Zoning Board of Adjustment, herein after called the Board, for the City of Clay was established on January 6, 2003 according to the provisions as herein provided. The Board shall be composed of five members and two supernumerary members appointed by the City Council, the supernumerary members shall serve the Board at the call of the chairman only in the absence of regular members. Each member of this Board shall serve without compensation and may be removed for cause by the appointing authority upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The appointment, procedures, powers and actions of said Board shall be governed and controlled by Title 11, Chapter 52, Article 4, Sections 80 and 81 of the Code of Alabama, 1975, and amendments thereto.

**1201.02.** Meetings, Procedures and Records. Meetings of this Board shall be held at such times the Board may determine, or upon call of the chairperson. Such chairperson or, in their absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public.

This Board shall adopt its own rules of procedure and keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, so indicating such fact. All records of the Board's examinations and of other official actions shall be immediately filed with the City Clerk and shall be of public record.

All procedures, bylaws and records shall be public record and be made available and shall immediately be filed in the office of the board

**1201.03.** Appeals.

Appeals to the Board must be filed with the City Clerk of the City of Clay together with information and documentation and in such form required by the Board

This Board shall fix a reasonable time for the hearing of an appeal taken within the time specified, and shall give public notice thereof as well as due notice to all adjoining property owners. Public notice shall be for a period of no less than fifteen (15) days. Written notice shall be given to all property owners adjoining a property being considered for an appeal, and an additional notice shall be posted on or as near the site as possible to serve as visual notification to the general public. A decision, regarding said appeal, shall be made by the Board within a reasonable time. Upon the hearing of such appeal, any party may appear in person, by agent or by attorney.

The City Clerk of the City of Clay shall be in charge of giving notice to adjoining property owners of the hearing to be held by the Board, in such manner as is required by applicable state law.

**1201.04 Time Limit for Rehearing.** A request for hearing before the Board which has been denied on first presentation shall only be accepted for re-hearing after a waiting period of six (6) months, unless significant changes occur which would warrant another hearing as determined by the Board. In any request for re-hearing less than six months from the calendar date of the initial hearing, the applicant must present evidence that the conditions pertinent to the case have changed significantly. If the Board is convinced by four concurring votes that there has been a significant change, an application can be filed and treated as a new request and will be heard at a subsequent meeting.

## Section 1202 Powers and Duties.

### **1202.01. Powers and Duties.**

The Powers and Duties of the Board are set forth in Section 11-52-80 of the Code of Alabama, 1975, as amended; these include but are not limited to:

- A. To hear and decide appeals where it is alleged there is any error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this article or of any ordinance adopted pursuant thereto.
- B. To hear and decide special exceptions to the terms of the ordinance upon which such Board is required to pass under such ordinance; and
- C. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.
- D. The Board may, in conformity with the provisions of this article, reverse, or affirm, wholly or partly, or may modify the order, requirement, decision, or, determine appealed from and may make such order, requirement, decision, or determination as ought to be made and, to that end shall have all the powers of the office from whom the appeal is taken. The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under any such applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance.
- E. The Board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called on by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

**1202.02. Administrative Review.** To hear and decide appeals where it is alleged there is any error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance or amendment thereto. In exercising the power of Administrative Review, the Board shall apply and not vary the terms of this ordinance. Such appeals may include the following:

- A. Hear and decide upon request for the interpretation of the provisions of this ordinance;
- B. Determine the precise location of boundary lines between zones when there is dissatisfaction with a decision regarding said subject by an administrative official; or
- C. Classification of a use, which is not specifically mentioned within the ordinance, for the purpose of determining the permissiveness of such use in any Zone.

**1202.03.** Special Exceptions. Within this ordinance, there are exceptions to the permitted uses of land listed in certain Zones and are identified as Special Exception uses. The Board is specifically authorized to:

- A. Hear and decide such Special Exceptions;
- B. Decide such questions as are involved in determining whether Special Exceptions should be granted; and
- C. Insure that Special Exceptions are granted only when they conform to the spirit and intent of this ordinance.

In exercising this power regarding Special Exceptions, the Board shall follow the language of this ordinance exactly, and should make certain that all the conditions specified in this ordinance have been met. Furthermore, the Board may compel the applicant to meet any additional requirements, which the Board deems necessary, to protect surrounding neighborhoods from undue congestion, excessive light and/or noise, odors, and other impacts which might otherwise be incurred by the exception.

**1202.04.** Variances. The Board may authorize, upon appeal in specific cases, such variance or variances from the terms of this ordinance as will not be contrary to the public interest and, where owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

**1202.05.** Validity and Applicability of Variances and Special Exceptions. Any variance or special exception granted by the Board, in addition to any other relevant provisions of this section, shall be applicable only to the land or property which is the subject of the Board's action.

**Section 1203. Appeals from Actions of the Board.** Any party aggrieved by any final judgment or decision of such board of zoning adjustment may within 15 days thereafter appeal therefrom to the circuit court by filing with the Board of Zoning Adjustment a written notice of appeal specifying the judgment or decision from which the appeal is taken. In case of such appeal the Board of Zoning Adjustment shall cause a transcript of the proceedings in the action to be certified to the court to which the appeal is taken, and the action in such court shall be tried de novo.



## CITY OF CLAY, ALABAMA ORDINANCE 2013 - 02

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### CERTIFICATION:

I, Ronnie Dixon, as City Manager of the City of Clay, Alabama, hereby Certify that the above and foregoing copy of one (1) **Ordinance 2013-02** is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Clay, Alabama, on the 18<sup>th</sup> Day of February 2013, as same appears in the official records of said City.

Posted at City Hall, Chalkville Regions Bank, Seniors Centers, and the United States Post Office all being in the City of Clay this the 19<sup>th</sup> Day of February, 2013.

Ronnie Dixon  
City Manager