

TOWNSHIP OF BIRCH RUN
SAGINAW COUNTY, MICHIGAN

ORDINANCE NO. 2007-01

ADOPTED: September 11, 2007

PUBLISHED: September 20, 2007

EFFECTIVE: October 20, 2007

An ordinance to amend the 2004 Birch Run Township Zoning Ordinance, Ordinance No. 2004-02 and herein referred to as the Birch Run Township Zoning Ordinance, to add, delete and revise sections of the ordinance pertaining to the regulation of the area and portion of a lot that may be occupied by structures and buildings, including revisions to the definition for lot coverage, and to address requirements of the Michigan Zoning Enabling Act including but not limited to public hearing notice requirements, ZBA creation and membership, appeals decisions to the circuit court, variance approval standards, findings of fact for special land use decisions, and procedures for amendments.

THE TOWNSHIP OF BIRCH RUN
SAGINAW COUNTY MICHIGAN
ORDAINS:

SECTION I
AMENDMENT of the PREAMBLE

The Preamble of the Birch Run Township Zoning Ordinance is hereby amended to read as follows:

PREAMBLE

An Ordinance enacted by Birch Run Township under Public Act 184 of 1943, as amended, to provide for the establishment of zoning districts within which the proper use of land and natural resources may be encouraged or regulated by Ordinance, and within which district provisions are adopted designating the location of, the size of, the uses that may be made of, the minimum open spaces, sanitary, safety, and protective measures that shall be required for, and the maximum number of families that may be housed in dwellings, buildings, and structures, to provide for administration and amendments of said Ordinance; to provide for appeals and for the organization and procedures to be followed by the Zoning Board of Appeals; and to provide for penalties for the violation of said Ordinance. The continued administration of this Ordinance, amendments to this Ordinance and all other matters concerning operation of this ordinance shall be done pursuant to P.A. 110 of 2006, as amended, the Michigan Zoning Enabling Act.

SECTION II
AMENDMENT of SECTION 1.02

Section 1.02 of the Birch Run Township Zoning Ordinance is hereby amended to read as follows:

Section 1.02 Purpose

It is the purpose of this Zoning Ordinance to promote the public health, safety, and general welfare of the inhabitants of Birch Run Township by encouraging the use of lands and natural resources in accordance with their character, adaptability and suitability for particular purposes; to enhance social and economic stability; to prevent excessive concentration of population; to reduce hazards due to flooding; to conserve and stabilize the value of property; to provide adequate open space for light and air and preserving community character; to prevent fire and facilitate the fighting of fires; to allow for a variety of residential housing types and commercial and industrial land uses; to lessen congestion on the public streets and highways; to facilitate adequate and economical provision of transportation, sewerage and drainage, water supply and distribution, education, recreation and other public services and facilities; to assure adequate provision of the state's citizens for food, fiber, energy and other natural resources; to ensure appropriate locations and relationships for uses of land; and to facilitate the expenditure of funds for adequate public facilities and services to conform with the most advantageous uses of land, resources, and property; and any other purpose permitted by the Michigan Zoning Enabling Act.

SECTION III
AMENDMENT of SECTION 3.02

Section 3.02 of the Birch Run Township Zoning Ordinance is hereby amended to read as follows:

Section 3.02 Responsibility for Administration

The administration and enforcement of this Ordinance shall be the responsibility of the Township Board, the Planning Commission, and such personnel as designated by the Township Board in accordance with P.A. 110 of 2006, as amended, "Michigan Zoning Enabling Act," and this Ordinance. The Township Board shall appoint a Zoning Administrator who shall act as an officer in the administration and enforcement of this Ordinance.

SECTION IV
AMENDMENT to INSERT SECTION 3.08

The Birch Run Township Zoning Ordinance is hereby amended by the addition of Section 3.08, to read as follows:

Section 3.08 Public Hearing Notices

- A. Hearing Notice Content: Unless otherwise required by the Michigan Zoning Enabling Act or this Ordinance where applicable, all mail, personal and newspaper notices for public hearings shall do all of the following:
1. Describe the nature of the request including whether the request is for a text amendment, zoning map amendment (rezoning), special land use, variance, appeal, ordinance interpretation or other purpose.
 2. Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the subject property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used such as a tax parcel identification number. No street addresses must be listed when eleven (11) or more adjacent properties are proposed for rezoning, or when the request is for an ordinance interpretation not involving a specific property.
 3. Indicate the date, time and place of the hearing(s).
 4. Indicate when and where written comments will be received concerning the request.
- B. Recipients and Means of Notice: Unless otherwise required by the Michigan Zoning Enabling Act or this Ordinance where applicable, the following shall receive notice of the hearing, which notice shall include the information specified in (A) above.
1. General public, by publication of the hearing notice in a newspaper of general circulation in the Township.
 2. To the owners of property for which approval is being considered, and the applicant if the applicant is different than the property owner, by mail or personal delivery.
 3. To all persons to whom real property is assessed within 300 feet of the boundary of the project subject to the request, and to the occupants of all structures within 300 feet of the property, regardless of whether the property or occupant is located in Birch Run Township, by mail or personal delivery. If the name of the occupant is not known, the term "occupant" may be used in making notification.
 - a. Subsection (3) above shall not apply in the case of rezoning requests involving eleven (11) or more adjacent properties, or an ordinance interpretation request or an appeal of an administrative decision that does not involve a specific property.
 4. To each electric, gas, and pipeline public utility company, each telecommunication service provider, each railroad operating within the district or zone affected, and the airport manager of each airport, that registers its name and mailing address with the Township Clerk for the purpose of receiving the notice of public hearing, by mail, in the case of a text amendment or zoning map amendment.
- C. Timing of Notice: Unless otherwise required by the Michigan Zoning Enabling Act or this Ordinance where applicable, all mail, personal and newspaper notices for public hearings shall be made not less than fifteen (15) days before the date the request will be considered for approval, including applications for zoning map amendments (rezonings), text amendments, special land uses, variances, appeals and ordinance interpretations.
- D. Confirmation of Notices Made by Mail or Personal Delivery: Notice shall be deemed mailed by its deposit in the United States first class mail, properly addressed and postage paid. The Township Clerk shall prepare a list of property owners and registrants to whom notice was mailed, as well as anyone to whom personal notice was delivered.

SECTION V
AMENDMENT of SECTION 5.02(B)(2) and (3)

Section 5.02(B)(2) and (3) of the Birch Run Township Zoning Ordinance is hereby amended to read as follows:

2. **Public Hearing:** Upon certification that the application materials are complete, the Planning Commission shall hold a public hearing on the special land use application. Notice of the hearing shall comply with Section 3.08.
3. **Planning Commission Action/Preliminary Site Plan:** Upon review of the preliminary special land use application including the preliminary site plan, all supporting materials such as staff and professional review reports including the community impact analysis report if so prepared, and the public hearing comments, the Planning Commission shall deny, approve, or approve with conditions the preliminary application for special land use approval including the preliminary site plan. The decision on a special land use shall be incorporated in a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed. In arriving at its decision, the Planning Commission shall refer to and be guided by the site plan standards set forth in Section 4.05, the general special land use standards set forth in Section 5.06, and the specific special land use standards set forth elsewhere in this Article. A request for approval of a land use or activity which is in compliance with those standards, other applicable ordinances, and state and federal statutes shall be approved. See Section 20.01 regarding conditional approvals.

SECTION VI
AMENDMENT of SECTION 6.02(A), (B) and (C)

Section 6.02(A), (B) and (C) of the Birch Run Township Zoning Ordinance is hereby amended to read as follows:

Section 6.02 Creation and Membership

A. **Establishment and Appointment of Members:** The ZBA first established by the Birch Run Township Zoning Ordinance adopted on August 14, 1984 is hereby retained in accordance with Public Act 110 of 2006, as amended, and shall consist of five members: a member of the Planning Commission; and the remaining members appointed by the Township Board from the electors residing in the Township outside of incorporated cities and villages. A member of the Township Board may serve on the ZBA but not serve as the chairperson. The Zoning Administrator or other employee or contractor of the Township Board may not serve on the ZBA.

1. **Alternate Members:** The Township Board may appoint not more than two (2) alternate members for the same term as regular members of the ZBA. No alternate member may be either a member of the Township Board or the Planning Commission. The alternate members may be called as needed, on a rotating basis, to sit as regular members of the ZBA in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings of the ZBA. 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. An alternate member shall serve on a case until a final decision is made. The alternate member shall have the same voting rights as a regular member of the ZBA.

B. **Terms of Office:** Members shall be appointed for three (3) year terms except in the case of the Planning Commission and Township Board members, whose terms shall be limited to the time they are members of the Planning Commission or Township Board. 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.

C. **Removal from Office / Conflict of Interest:** 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 VII
AMENDMENT of SECTION 6.04

Section 6.04 of the Birch Run Township Zoning Ordinance is hereby amended to read as follows:

Section 6.04 Jurisdiction

The ZBA shall act upon questions as they arise in the administration of this Ordinance and take other actions as specified in this Ordinance. The Board shall perform its duties and exercise its powers as provided in Public Act 110 of 2006, as amended. The ZBA 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 so specified in this Ordinance including appeals regarding an administrative review, interpretations, and variances.

SECTION VIII
AMENDMENT of SECTION 6.08(B)

Section 6.08(B) of the Birch Run Township Zoning Ordinance is hereby amended to read as follows:

B. Hearing: Upon receipt of an application, the chairperson of the ZBA shall fix a reasonable time and date for a hearing, taking into account adequate time for members of the ZBA to review the application prior to such hearing. Notice of the hearing shall comply with Section 3.08. Upon the hearing, any party may appear in person or by agent or attorney.

SECTION IX
AMENDMENT of SECTION 6.09

Section 6.09 of the Birch Run Township Zoning Ordinance is hereby amended to read as follows:

Section 6.09 Review By Circuit Court

A. Circuit Court Review: The decision of the ZBA shall be final. However, any party aggrieved by an order, determination or decision of the ZBA may obtain a review thereof in the Circuit Court. The Circuit Court shall review the record and decision of the ZBA to insure that the decision:

1. Complies with the constitution and laws of the State.
2. Is based upon proper procedure.
3. Is supported by competent, material, and substantial evidence on the record.
4. Represents the reasonable exercise of discretion granted by the Board of Appeals.

SECTION X
AMENDMENT of SECTION 7.03(C) and (D)

Section 7.03(C) and (D) of the Birch Run Township Zoning Ordinance is hereby amended to read as follows:

C. Planning Commission Action

1. **Public Hearing**: The Planning Commission shall review the application materials. Upon finding that the application materials are satisfactory and the Planning Commission has a clear understanding of the requested amendment, the Planning Commission shall establish a date for at least one (1) public hearing on the application and hold such hearing. The Township Clerk shall give notice of the public hearing according to Section 3.08.
2. **Planning Commission Review**: In reviewing any application for an amendment to this Ordinance, the Planning Commission shall identify and evaluate all factors relevant to the application. Findings of fact shall be gathered and shall be made a part of the public records of the meetings of the Planning Commission.
 - a. If the petition involves an amendment to the official zoning map, matters to be considered by the Planning Commission shall include, but shall not be limited to, the following:
 - 1) What, if any, identifiable conditions related to the application have changed which justify the proposed amendment?
 - 2) What are the precedents and the possible effects of such precedent which might result from the approval or denial of the petition?
 - 3) What is the impact of the amendment on the ability of the Township and other governmental agencies to provide adequate public services and facilities, and/or programs that might reasonably be required in the future if the proposed amendment is adopted?
 - 4) Does the petitioned district change adversely affect environmental conditions, or the value of the surrounding property?
 - 5) Is the site’s physical, geological, hydrological and other environmental features compatible with the host of uses permitted in the proposed district?
 - 6) Is the subject property able to be put to a reasonable economic use in the District in which it is presently located?
 - 7) Does the petitioned district change generally comply with the Birch Run Township Master Plan and other planning goals and policies of the Township?
 - 8) Is the proposed rezoning consistent with the zoning classification of surrounding land?
 - 9) Can all requirements in the proposed zoning classification be complied with on the subject parcel?
 - b. If the petition involves an amendment to the text of the Ordinance, matters to be considered by the Planning Commission shall include, but shall not be limited to, the following:
 - 1) Is the proposed amendment supported by documentation, such as from the Zoning Board of Appeals, that the proposed amendment would minimize problems or conflicts with specific sections of the Ordinance?
 - 2) Is the proposed amendment supported by reference materials, planning and zoning publications, information gained at seminars or experiences of other communities to more effectively deal with certain zoning issues?

- 3) Is the proposed amendment supported by significant case law?
- c. In determining the above mentioned findings of fact, the Planning Commission may solicit information and testimony from officials of, but not limited to, the County Health Department, County Road Commission, County Drain Commission, County Sheriff Department, and any school district affected.
3. **Planning Commission Recommendation:** The Planning Commission shall transmit its findings of fact, recommendations for disposition of the application, and a summary of comments received at the public hearing to the Township Board. The Planning Commission shall simultaneously transmit its recommendations for disposition of the application to the Saginaw County Metropolitan Planning Commission (SCMPC) pursuant to the Michigan Zoning Enabling Act. If the Planning Commission has not received comments from the SCMPC within thirty (30) days after receipt of the Planning Commission's findings of fact and recommendations for disposition of the application, it shall be conclusively presumed that the SCMPC has waived its right for review and recommendation of the amendment.
- D. Township Board Action
1. After receiving and reviewing the findings and recommendations of the Township Planning Commission, and the recommendations of the SCMPC, the Township Board at any regular meeting or at any special meeting called for that purpose, shall consider said findings of fact and recommendations and vote upon the adoption of the proposed amendment. Such action shall be by Ordinance, requiring a majority vote of the Township Board.
 - a. The Township Board may hold additional public hearings if the Township Board considers it necessary. The Township Board shall grant a hearing on the proposed amendment to any property owner who has filed a written request to be heard. This written request shall take the form of a certified mail letter from the property owner to the Township Clerk. All hearings subject to this subsection (D) shall comply with the notice requirements of Section 3.08.
 2. The Township Board may refer any proposed amendments back to the Planning Commission for further consideration and comment within a time specified by the Township Board. Such referral shall identify the concerns or suggestions of the Township Board regarding the amendments.

SECTION XI
AMENDMENT of TABLE 9-4 of ARTICLE 9

Table 9-4 of Article 9 of the Birch Run Township Zoning Ordinance is hereby amended by the addition of Footnote 11, to read as follows, and to be applied to the A-1, R-1, R-2, and R-3 District cells in such Table under the "Maximum Lot Coverage" column:

11. In addition to compliance with the maximum lot coverage percent standard of Table 9-4, a minimum of sixty percent (60%) of a lot used principally for residential purposes shall be maintained as open space. For the purposes of this Footnote #11, "open space" shall be defined as areas dedicated to the growth and maintenance of grasses, shrubs, trees and/or other plant material. For clarification purposes, features that shall not be considered as open space shall include, but not be limited to, wood or other decking; stone, brick, asphalt, concrete, gravel, landscape pavers, and hard surface patios and outdoor areas irrespective of the width of the gap between bricks and stones, and similar component surfaces of such areas. For clarification purposes, features that shall be considered as open space include, but are not limited to, lawns, woodlands, gardens, and planting beds including mulched beds.

SECTION XII
AMENDMENT of SECTION 20.20(D)

Section 20.20(D) of the Birch Run Township Zoning Ordinance is hereby amended to read as follows:

D. Maximum Area of Lot:

1. Definitions: For the purposes of this subsection (D) only, the following terms shall have the following meanings:
 - a. Building: Any structure, either temporary or permanent, having a roof and enclosed along twenty-five percent (25%) or more of its side by a wall or similar full enclosure.
 - b. Structure: Any structure, either temporary or permanent, having a roof but which has no walls, or is enclosed by walling or similar full enclosure for less than twenty-five percent (25%) of its perimeter, or is enclosed by lathe or similar open construction, such as in the case of a roofed carport, roofed gazebo, and roofed decks and patios.
2. Maximum Area: Accessory buildings and structures as defined above in subsection (1), on a lot used principally for residential purposes, shall not occupy a greater area of such lot than as delineated in the Maximum Area of Lot Table below.

Maximum Area of Lot Table¹

Lot Area	Accessory Buildings	Accessory Structures
Less than 1.99 acres	The lesser of 2.8% of the lot or 2,000 square feet.	600 square feet.
2.00 – 3.99 acres	The lesser of 2.9% of the lot or 4,500 square feet.	800 square feet.
4.00 acres or greater	The lesser of 2.9% of the lot or 6,000 square feet.	1,000 square feet.

¹ Accessory buildings and structures are also subject to the maximum lot coverage regulations of Table 9-4 (Article 9). See Article 21 for definition of “lot coverage.”

SECTION XIII
AMENDMENT of ARTICLE 21 DEFINITION for LOT COVERAGE

The definition of “Lot Coverage” in Article 21 of the Birch Run Township Zoning Ordinance is hereby amended to read as follows:

Lot Coverage: The amount of a lot, stated in terms of percentage, that is covered by all buildings or other roofed structures including car ports, gazebos, and roofed patios, porches and decks, whether fully roofed or of a lathe character. Provided such features are unroofed, the phrase “lot coverage” shall not apply to decks, patios, driveways, swimming pools, tennis courts and similar unroofed features. Lot coverage shall be measured from the drip line of the roof or from the wall or foundation if there is no projecting portion of the roof.

SECTION XIV
SEVERABILITY

Should any section, clause or provision of this Ordinance be declared unconstitutional, illegal or of no force and effect by a court of competent jurisdiction, then and in that event such portion thereof shall not be deemed to affect the validity of any other part or portion of this Ordinance.

SECTION XV
EFFECTIVE DATE and REPEAL of CONFLICTING ORDINANCES

This Ordinance shall take effect eight (8) days following publication, following adoption. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

STATE OF MICHIGAN
COUNTY OF SAGINAW

I, the undersigned, the fully qualified and acting Clerk of the Township of Birch Run, Saginaw County, Michigan, do hereby certify that the foregoing is a true and complete copy of an ordinance adopted at a regular meeting of the Township Board of the Township of Birch Run, Michigan, held on the 11th day of September, 2007.

I further certify that on the 20th day of September, 2007, I caused a notice of such adoption to be published in the Birch Run Township, a newspaper circulated in the Township of Birch Run, and that said Ordinance and the record of publication was duly recorded in the Book of Ordinances of the Township of Birch Run and is available for public use and inspection at the offices of the Birch Run Township Clerk.

IN WITNESS WHEREOF, I have hereunto fixed my official signature on this 20th day of September, 2007.

Amy Cook, Clerk
Birch Run Township