

BRANCH COUNTY

MEMORIAL AIRPORT ZONING ORDINANCE

Adopted: 4/30/21, 2021

Ordinance # 20

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BRANCH COUNTY AIRPORT ZONING ORDINANCE

GENERAL

An Ordinance establishing airport zoning regulations restricting the height of structures and objects of natural growth and otherwise regulating the use of property in the vicinity of the Branch County Airport; providing for the allowance of variances from such regulations; designating the Zoning Administrator charged with the administration and enforcement of such regulations; establishing an airport zoning board of appeals; providing for enforcement; and imposing penalties for violation of this Ordinance.

Pursuant to the authority conferred by the provisions of the Airport Zoning Act, being Act No. 23 of the Public Acts of the State of Michigan for the year 1950 (Extra Session) and for the purpose of promoting the health, safety, and general welfare of the inhabitants of the County of Branch by preventing the establishment of the airport hazards and thereby protecting the general public, users of the Branch County Airport, and occupants of land in its vicinity, and preventing the destruction and impairment of the utility of said airports and the public investment therein.

The Branch County Board of Commissioners, under the provisions of Section 13 of Act No. 23 of the Public Acts of the State of Michigan for the year 1950 (Extra Session), does hereby ordain as follows:

ARTICLE 1

PURPOSE AND LIMITATIONS

1.1 Title

This Ordinance includes all airport zoning plans attached hereto and is to be known and may be cited as the "Branch County Airport Zoning Ordinance."

1.2 Objective

The principle objective of this Ordinance is to prevent the creation or establishment of airport hazards and thereby to provide additional safety and protection to the users of the airport and to the people who live and work in its vicinity.

1.3 Hazard Area

The Ordinance establishes regulations on land within a 10 mile radius of the Branch County Airport (the "Hazard Area") (see attached Sheet 3). This Ordinance establishes a huge air bowl with a maximum height limitation of 500 feet above the established elevation of the airport at the outer edge and has a minimum height limitation of 25' feet above the ground at some locations adjacent to the Airport in the approaches to the runways. The height limitations of this Ordinance become less restrictive as the distance from the Airport is increased.

1.4 Hazards

Structures and trees which project above the height limitations under this Ordinance are considered hazards to air navigation and endanger lives and property. The prescribed height limits are based on past experience and studies made by the Michigan Aeronautics Commission and by the Federal Aviation Administration. Height limits are based upon the established elevation of the Airport or upon the elevation of the end of the nearest runway.

1.5 Administration

The Branch County Airport Manager shall administer and enforce the provisions of the Ordinance.

1.6 Heights Requiring Permits

A person shall not construct a structure or increase the height of an existing structure, higher than the following, without first obtaining a permit from the Airport Zoning Administrator:

- a) Twenty-five (25) feet or higher above ground level within three (3) miles of the Branch County Memorial Airport (See attached **Sheet 2**, green circle).
- b) One hundred (100) feet or higher above ground level from 3 miles to 6.32 miles from the Branch County Memorial Airport (See attached **Sheet 2**, blue circle).
- c) Two hundred (200) feet or higher above ground level from 6.32 miles to 10 miles from the Branch County Memorial Airport (See attached **Sheet 2**, red circle).

1.7 Land-Use Types Requiring Permits

To promote the general purpose and objectives of this Ordinance and its effective administration, all persons making use of land within the areas shown on **Sheet 5** of the zoning plans are advised to consult the Land Use Chart/Guidelines attached as **Sheet 6** to this Ordinance.

1.8 Where to Obtain Copies of this Ordinance

Information regarding height limits and copies of the Ordinance are available at the offices of County of Branch, the Branch County Airport, or the Michigan Department of Transportation, 2700 Port Lansing Road, Lansing, Michigan 48906. A copy of the Ordinance is on file with the County Clerk of Branch County.

ARTICLE 2 DEFINITIONS

2.1 Words and Phrases

For the purposes of this Ordinance, the words, terms and phrases set forth in Sections 2.2 through 2.13 inclusive, shall have the meanings prescribed in those sections.

2.2 Above Ground Level

The term "above ground level" denotes elevations above ground level at the base of the structure.

2.3 Airport

The term "Airport" means the Branch County Memorial Airport and all appurtenances used or acquired for airport buildings or other airport facilities, and all other appurtenant rights of way or other existing or future interests.

2.4 Airport Hazard

"Airport Hazard" means any structure or tree within the airport hazard area which exceeds the height limitations established by this Ordinance, or any use of land or appurtenances within the airport hazard area which interferes with the safe use of the airport by aircraft.

2.5 Airport Hazard Area or Hazard Area

The term "airport hazard area" means any area of land or water, or both, lying within a ten-mile radius from the established center of the Branch County Memorial Airport.

2.6 Airport Zoning Act

The term "Airport Zoning Act" refers to Act No. 23 of the Public Acts of the State of Michigan for the year 1950 (Extra Session).

2.7 Board

The term "Board" means the Board of Appeals as hereinafter created and designated below.

2.8 Land-Use Safety Zone

The term "land-use safety zone" means an area or zone in which certain types of land uses are restricted due to risk of accident, noise, vibrations, fumes, dust, fuel particles and other effects that may be caused by the operation of aircraft landing at, or taking off from, or operating at the Branch County Airport.

2.9 Non-Conforming Use

The term "non-conforming use" means any structure, tree or use of land which does not conform to a regulation prescribed in this Ordinance or any amendment as of the effective date of such regulation.

2.10 Person

The term "person" means any individual, firm, partnership, corporation, company, association, joint stock association, municipal corporation or other body politic, including any trustee, receiver, assignee or other similar representative.

2.11 Structure

The term "structure" means any object constructed or installed by man, including but without limitation, buildings, towers, smokestacks, overhead transmission lines, and radio and television aerials and antennae, but not including highways and their appurtenances.

2.12 Tree

The term "tree" means any object of natural growth.

2.13 Zoning Administrator

"Zoning Administrator" means the Branch County Airport Manager, or his designee, who is designated and charged with the administration and enforcement of this Ordinance,

ARTICLE 3 ZONES

3.1 Airport Hazard Areas

An airport Hazard Area is established, which area or zone consists of all the lands within Branch County lying beneath the approach, transitional, 149 feet horizontal, conical and 500 feet horizontal surfaces, within a circle having a radius extending horizontally 10 miles (see attached **Sheet 3**) from the established center of the usable landing areas of the airport ("Airport Reference Point"). The boundaries of the hazard areas and corresponding land use guidelines are shown on the airport zoning plans numbered Sheets 1 through 6, which maps, diagrams and tables are attached and made a part of this Ordinance.

3.2 Legal Height Limitations

No person may erect or maintain any structure to a height in excess of the limitations prescribed by the terms of this Ordinance and the attached maps, or to plant or allow any tree to grow to a height in excess of the limitations prescribed by the terms of this Ordinance and the attached maps; or to establish any use of lands contrary to the provisions of this Ordinance.

3.3 Unlawful Land Use

Notwithstanding any other provisions of this Ordinance, no person may use any lands within any airport Hazard Area which:

- (a) Would create electrical interference with radio communications between the airport and aircraft or create interference with navigational aids employed by aircraft;
- (b) Would make it difficult for flyers to distinguish between airport lights and others or result in glare to the eyes of flyers using the airport;
- (c) Would create air pollution in such amounts as to impair the visibility of flyers in the use of the airport;

- (d) Would locate or permit the operation of a dump, waste disposal site, sanitary landfill, hazardous waste facility, solid waste transfer station or recycling facility within 10,000 feet of any runway at the airport, unless the construction, location and operation of the site is approved or authorized by the Federal Aviation Administration as not being in violation of its orders, rules or regulations applicable to the airport, or unless a waiver is issued by the Federal Aviation Administration.
- (e) Would otherwise endanger the landing, taking off, or maneuvering of aircraft;
- (f) Would attract birds affecting flight safety.
- (g) Would raise the descent minimums of any instrument approach procedure to the airport, or otherwise limit operations at the airport, as determined by an airspace study conducted by the Federal Aviation Administration.

3.4 Non-Conforming Existing Structures

This Ordinance shall not apply to structures existing in an airport Hazard Area at the time it or subsequent amendments became effective, unless the Zoning Administrator determines it to be abandoned, or 80% torn down, destroyed, deteriorated, or decayed. New construction, and construction increasing the height of existing structures within the Hazard Area, must conform to the current provisions on height limitations.

3.5 Changes or Alterations to Non-Conforming Structures, Trees, Land Uses

This Ordinance shall apply to changes or alterations which increase or allow for an increase in the height of existing structures, trees or other non-conforming uses after the effective date of this Ordinance, with the same force and effect as though the same were new uses. Except as otherwise provided in this Ordinance, no structure shall be constructed, altered, located or permitted to remain after such construction, alteration or location, and no trees shall be allowed to grow, to a height in excess of the height limits indicated in this Ordinance.

3.6 Land-Use Safety Zone

The purpose of land-use safety zones defined in Article 2, is to designate areas in which certain types of land uses are restricted due to undesirable effects that may be caused by the operation of aircraft. See the land-use chart, as shown on Sheet 6 of the airport zoning plans, for land use restrictions.

ARTICLE 4
ORDINANCE ADMINISTRATION

4.1 Approach Standards

The approach, transitional, conical and inner horizontal surfaces which establish the height limitations under this Ordinance are denoted on sheets 2, 3 and 4 of the zoning plans, and are established in conformance with approach standards or regulations of the Michigan Aeronautics Commission or the Federal Aviation Administration. In acting upon applications for permits the Zoning Administrator will arrive at proper height limitations by interpolating between contours shown on the zoning plans.

4.2 Zoning Administrator as Administrative Agency

The Branch County Airport Manager is designated the Zoning Administrator charged with the duty of administering and enforcing this Ordinance. The Zoning Administrator shall act as the "administrative agency" referred to in the Airport Zoning Act. The duties of the Zoning Administrator shall include those of issuing permits as provided in this Ordinance, but the Zoning Administrator shall not have or exercise any of the powers or duties delegated to the Board of Appeals. The Zoning Administrator may adopt such rules of procedure as may be necessary in connection with the administration and enforcement of this Ordinance.

4.3 Board of Appeals

There is hereby created a Board of Appeals consisting of five members, each to be appointed for a term of 3 years and until his or her successor is appointed and qualified, one of whom shall be designated as Chair and one of whom shall be designated as Vice-Chair, which appointments shall be made by the Branch County Board of Commissioners and provided that upon such appointments being initially made, one member of the Board shall be appointed for a term of 1 year, two for terms of 2 years each, and two for terms of 3 years each. Board members shall be removable by the appointing body for cause shown, upon written charges and after notice and opportunity to be publicly heard. The Board of Appeals has the powers set forth in Section 28 of the Airport Zoning Act and this Ordinance and shall exercise such powers as are conferred upon it. Board members shall be compensated at the same amounts as Branch County Airport Board members.

- (a) Official Name: The Board of Appeals shall be officially known as the Branch County Airport Zoning Board of Appeals.
- (b) Rules and Procedures: The Board of Appeals shall adopt rules and bylaws concerning its organization and procedure, including appeal forms, and other authorized matters, consistent with the provisions of the Airport Zoning Act and this Ordinance. Such rules shall include, but not be limited to, providing a reasonable period of time from which appeal may be taken to it from an action of the Zoning Administrator. Meetings of the Board shall be held at the call of

the Chair and/or two (2) or more members and notice of all meetings shall be given to all members and as provided under the Open Meetings Act. An annual meeting shall be held during the month following the anniversary date of this Ordinance. The Chair, or in his or her absence the Vice-Chair, may administer oaths or affirmations and issue subpoenas to compel the attendance of witnesses. All hearings of the Board of Appeals shall be public, and it shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, then so indicating, and the Board shall keep records of its examinations and other official acts, all of which shall be immediately filed in the offices of the Board and shall be a public record.

- (c) Powers: The Board of Appeals, by the concurring vote of a majority of its members, shall have the power to issue certificates of variance under the provisions of this Ordinance, or to otherwise decide appeals from any order, requirement, rule, regulation, decision or determination made by the Zoning Administrator under the powers conferred upon it by this Ordinance.
- (d) Who May Appeal: Any person, including the governing body of any political subdivision, aggrieved by any decision of the Zoning Administrator made in the administration of this Ordinance, may appeal to the Board of Appeals.
- (e) Appeal Procedure: All appeals from actions of the Zoning Administrator shall be taken within the time and in the manner provided by the rules of the Board of Appeals, by filing with the Zoning Administrator and with the Board a notice of appeal specifying the grounds of appeal. The Zoning Administrator shall promptly transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in the Zoning Administrator's opinion, cause imminent peril to life or irreparable damage to property. In that case, proceedings shall not be stayed otherwise than by order of the Board and on due cause shown. The Board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the appeal within a reasonable time. At the hearing any party may appear in person or by agent or by attorney. The Board may, in conformity with the provisions of this Ordinance, reverse, affirm or modify, wholly or partly, the order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Administrator.
- (f) Certificates of Variance: An application for certificate of variance is to be submitted on the form provided for by the rules of the Board of Appeals. If the application is granted, the applicant will receive a certificate of variance in the form prescribed by such rules. The certificate shall provide that it is not effective for a period of thirty (30) days following the date of its issuance. Immediately upon issuance, copies of the certificate shall be filed with the zoning

Administrator, the Michigan Aeronautics Commission and each political subdivision affected by the certificate. In acting upon applications for variance, variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest and approach protection, but would do substantial justice and be in accordance with the spirit of the regulations of this Ordinance; provided, however, that any variance may be allowed subject to any reasonable condition or conditions subsequent that the Board of Appeals may deem necessary to effectuate the purpose of this Ordinance. Nothing in this section shall be construed to permit a use which would conflict with any general zoning ordinance or regulation of any political subdivision applicable to the same area or that would create a land use unlawful under Section 3.3 of this Ordinance.

4.4 Appeals to Circuit Court

Any person, including the Michigan Aeronautics Commission on behalf of and in the name of the State, aggrieved by any decision of the Board of Appeals, may appeal to the Circuit Court of the County of Branch as provided in Section 30 of the Airport Zoning Act.

ARTICLE 5 PERMITS

5.1 Permit Required

An airport zoning permit shall be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed, substantially altered or substantially repaired, in any airport Hazard Area,

5.2 Application for Permits

Applications for permits shall be made to the Zoning Administrator in three (3) copies upon forms furnished by the Zoning Administrator. The application shall comply with the following:

- (A) The owner of the land on which the structure or vegetation is proposed must sign the Application for the Permit, along with any proposed Lessee, licensee or operator of the proposed structure.
- (B) An Application for a Permit shall include a site plan and be accompanied by the Airport Zoning Permit Fee assessed by the Zoning Administrator. Every Site Plan submitted to the Airport Zoning Administrator shall be in accordance with the following requirements:

- (1) If the subject property is less than three (3) acres, a scale of not less than one inch (1") equals fifty feet (50'). If the subject property three (3) acres or more, one inch (1") equals one hundred feet (100').
- (2) Date, north point and scale
- (3) The Latitude and Longitude of the base of the proposed structure or use
- (4) The elevation of the land at the base of the proposed structure or use
- (5) The dimensions of all lot and property lines showing the relationship of the subject property and abutting properties.
- (6) The uses of all surrounding property, including general topography, natural characteristics such as woods, wetlands and floodplains, public drains, utilities and other related items.
- (7) The location of all existing structures within one thousand feet (1000') of the subject property.
- (8) The location of existing developments, planned new development(s) and site revisions, including grading, landscaping, pedestrian circulation, traffic patterns, and other activities
- (9) The location of all existing and proposed drives and parking areas
- (10) The location and right-of-way widths of all abutting streets, alleys, roads, highways and/or easements
- (11) The name, address and seal of the architect, designer, planner or engineer responsible for the preparation of the site plan.

5.3 Permit Procedures

The Zoning Administrator shall, within thirty (30) days from receipt of a complete application, determine whether the height limitations as designated by the airport zoning maps and this Ordinance, would or would not be violated if the application were granted. If no height limitations will be violated, the Zoning Administrator shall approve the application. In no instance may the Zoning Administrator permit a variance. If the Zoning Administrator determines that height limitations will be violated, the Zoning Administrator shall deny the application. This determination shall be made in writing to the Applicant.

In the event of a denial, the Applicant may apply to the Board of Appeals for a certificate of variance.

The issuance of a permit shall not be construed to permit a use that violates section 3.3 of this Ordinance or any general zoning ordinance or regulations of any political subdivision applicable to the same area.

No appeal may be taken to the Circuit Court unless and until the Board of Appeals has denied a request for a variance.

5.4 Exception for Emergency Repairs

No permit is required for the emergency repair or emergency replacement of nonconforming public utility structures, other than buildings, when the height of such structures will not be increased by such repairs or replacement. It is intended that in the application of this provision any combination of circumstances calling for immediate action or remedy in the repair or replacement of such non-conforming public utility structures shall be deemed an emergency.

5.5 Duration of Permit

Permits shall be valid for a period of one (1) year from the date of issuance.

5.6 Miscellaneous Requirements

The Airport Zoning Administrator may require the Applicant to obtain an opinion of an Aeronautical Engineer approved by the Airport Zoning Administrator or the Federal Aviation Administration (FAA). The Opinion shall address whether the proposed structure to be permitted will or will not violate the provisions of federal law, state law, or this Ordinance. The Opinion shall further address whether the proposed structure to be permitted may imminently or materially interfere with a terminal obstacle clearance area, a departure area, turn and termination area or circling approach area of the current airport or any proposed additions to the airport. The Applicant shall pay for the costs to obtain the Opinion. The Opinion shall be made available to the public.

ARTICLE 6 ENFORCEMENT

6.1 Penalties

Any person who violates this Ordinance or any regulations, orders or rulings made pursuant to this Ordinance, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$500.00 ~~or imprisoned for a term not to exceed 90 days, or both.~~ Each day a violation continues to exist after notice shall constitute a separate offense. Such notice may be given by the Zoning Administrator by certified mail, return receipt requested, addressed to the person maintaining the violation at the last known address.

6.2 Appearance Ticket Authorization

Unless prohibited by state law, the following persons are empowered to issue and serve appearance tickets for violations of this Ordinance, pursuant to Act No.175 of the Public Acts of 1927, as amended by Act No.506 of the Public Acts of 1980, Act No.366 of the Public Acts of 1984 and Act No.49 of the Public Acts of 1988, being sections 764.9c and 764.9f of the Michigan Compiled Laws:

- (A) The Branch County Sheriff and all other Deputy Branch County Sheriffs.
- (B) The Airport Zoning Administrator or his or her designee.

6.3 Civil Action Available

The Branch County Board of Commissioners, on behalf of and in the name of the County of Branch, may, in addition to any criminal action taken, institute in the Circuit Court of Branch County, an action to prevent, restrain, correct or abate any violation of this Ordinance or the Airport Zoning Act, or of airport zoning regulations adopted under this Ordinance or under the Airport Zoning Act, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order to effectuate fully the purposes of this Ordinance or the Airport Zoning Act and the regulations adopted and orders and rulings made pursuant thereto.

ARTICLE 7 FEDERAL LAWS FEDERAL AVIATION REGULATIONS

7.1 Federal Laws (Part 77, 14 C.F.R. §77.1 et seq.)

The airport zoning ordinance is not intended to conflict with existing federal approach protection laws, The Federal Aviation Administration requires that it be given notice of any construction or alteration:

- (a) That would be more than 200 feet above ground level at its site.
- (b) That would be above an imaginary surface extending outward and upward at 100:1 slope within 20,000 feet of the nearest point of a runway more than 3200 feet in length.
- (c) That would be above an imaginary surface extending outward and upward at 50:1 slope within 10,000 feet of the nearest point of a runway less than 3200 feet in length.

ARTICLE 8
SEVERABILITY OF PROVISIONS

8.1 Severability of Provisions

If any of the provisions of this Ordinance or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications of the Ordinance, and to that end the provisions of this Ordinance are declared to be severable.

ARTICLE 9
AMENDMENTS

9.1 Amendments

This Ordinance, and the regulations prescribed herein, may be amended by the Branch County Board of Commissioners after a public hearing is held in relation to the proposed amendment, pursuant to Section 19 of the Airport Zoning Act.

ARTICLE 10
REPEAL OF PRIOR ZONING ORDINANCE

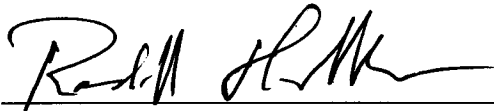
10.1 Repeal

The Branch County Board of Commissioners hereby repeals the Branch County Airport Zoning Ordinance, effective 2002.

ARTICLE 11
EFFECTIVE DATE

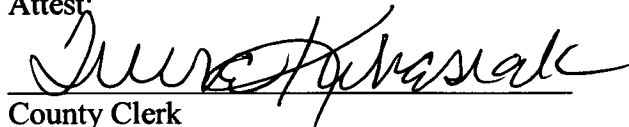
11.1 Effective Date

This Ordinance shall take effect on 5/07/21, after notice of its adoption is published in a newspaper of general circulation in Branch County.



Chairperson, Branch County Board of Commissioners

Attest:


County Clerk