

**FABIUS TOWNSHIP
ST. JOSEPH COUNTY, MICHIGAN**

ORDINANCE NO.

Adopted:

Effective:

V-1

An Ordinance to amend the Fabius Township Zoning Ordinance’s Definition Section to provide for private roads and shared driveways; to amend the “access to street” provisions; to add Private Roads standards in the special use section; to provide for severability; to provide an effective date; and to repeal all Ordinances or parts of Ordinances in conflict herewith.

**THE TOWNSHIP OF FABIUS,
ST. JOSEPH COUNTY, MICHIGAN**

ORDAINS:

SECTION I

AMENDMENT TO ARTICLE I, “IN GENERAL”

The definition of “Street” contained in Article I “In General” Section 46-3, “Definitions” of the Fabius Township Zoning Ordinance, as amended, is hereby amended to read as follows:

“*Street*-A public right-of-way, private road, or shared driveway which provides vehicular and pedestrian access to abutting properties and which shall provide easements and/or rights-of-way therein for public improvements.

- Public Street: A public thoroughfare located within a public road right-of-way and dedicated to public use, which affords traffic circulation and provides access to abutting property.
- Private Road: A privately-owned and maintained thoroughfare, located within a private road right-of-way easement, providing access to three (3) or more contiguous parcels, which is not a public road, which affords traffic circulation and provides access to three (3) or more abutting parcels.

- Shared Driveway: A driveway that provides the primary access from a public road to only two (2) contiguous parcels which, because of their zoning, configuration, or other element related to the land, cannot be or are unlikely to be split into future additional lots. A shared driveway permit is required, see Section 46.662
- Safe and Unimpeded Route of Travel: A road surface of at least twenty-four (24) feet in width and is of sufficient quality of construction to accommodate any fire, police, rescue or other emergency vehicle.

SECTION II
AMENDMENT TO ARTICLE VII, “SUPPLEMENTAL DISTRICT REGULATIONS”

Article VII, Division 1, “Generally”, Section 46-649, “Frontage on a street” is hereby amended to read as follows:

“Sec. 46-649.- Frontage on a street.

Each lot or parcel shall have frontage on a public street or private road as required by the zoning district in which it is located. All new private roads require a special land use as established in section 46-662.

- a. Shared Driveways for up to two (2) parcels may be approved by the Zoning Administrator so long as a Safe and Unimpeded Route of Travel is provided (See Definitions “Street”). Cross easements for the shared driveway shall be recorded with the County Register of Deeds. Any access for more than two (2) parcels shall be via private road or public street.
- b. Public Access to commercial, industrial or recreational uses shall not be designed so as to pass through residential neighborhoods.”

SECTION III
AMENDMENT TO ARTICLE II, “ADMINISTRATION AND ENFORCEMENT”

Article II, Division 2, “Site Plan Review”, Section 46-71 “Procedures” is hereby amended by the addition of a new subsection labeled (f) to read as follows:

“(f) Private Roads pursuant to Section 46-662 of this Ordinance.”

SECTION IV
AMENDMENT TO ARTICLE VII, “SUPPLEMENTAL DISTRICT REGULATIONS”

Article VII, Division 1, “Generally”, Section 46-662, “Private road construction and follows:

“Sec. 46-662.-Private road construction and maintenance standards and requirements.

The Township recognizes that, as large tracts of land are divided, sold, transferred and developed, private roads may be created to provide access to newly-divided properties. The Township determines that it is in the best interest of the public health, safety and welfare to regulate the construction, improvement, extension, expansion relocation and use of private roads. Private roads are subject to site plan review and the following additional requirements:

1. **Permit required.** No individual, association, corporation or entity, either public or private shall construct or extend a private road without first having obtained special use approval hereunder.
2. **Limitation on number of parcels to be serviced.** No more than twenty (20) parcels may be served by a private road. The number of lots or parcels may be increased if a HOA (Homeowners Association) is established and approved by the Township Board.
3. **Access to public road.** A private road shall be permitted only upon receipt of approval for public road access from the County Road Commission.
4. All private roads shall be constructed and maintained such that they are passable in all weather conditions; and shall readily afford access to emergency services via a Safe and Unimpeded Route of Travel to all buildings, dwellings or other structures serviced by the private road.
5. Private roads shall be constructed of suitable materials, either asphalt or 6” (six inches) gravel and shall be maintained year-round, regardless of the occupancy of the parcels they serve.
6. Private roads shall be constructed to protect against or minimize soil erosion and prevent damage to lakes, streams, wetlands, and other significant natural features of the Township.
7. All setbacks required by this Ordinance shall be measured from the right-of-way line of the private road. Minimum lot and width areas shall exclude any private road easements. Private Road Design and Construction Requirements.
8. **Private Road Design and Construction Requirements.**
 - a. A private road shall not provide access to more than twenty (20) lots or parcels. Road proposed to provide access to more than twenty (20) lots or parcels must be dedicated as a public road and built to the standards for approval by the County Road Commission.
 - b. A private road with only one (1) access point to a public road shall not exceed two thousand five hundred (2,500) feet in length, as measured along the centerline of the private road. Any private road exceeding this length shall provide for at least one (1) additional access to a public road.
 - c. All shared driveways constructed after the date of amendment of this ordinance shall have a recorded permanent right-of-way and easement with a minimum width of thirty (30) feet. The right-of-way

shall expressly permit public and/or private utilities to be installed within the right-of-way.

- d. All private roads constructed after the date of amendment of this ordinance shall have a recorded permanent right-of-way and easement with a minimum width of sixty-six (66) feet. The right-of-way shall expressly permit public and/or private utilities to be installed within the right-of-way.
- e. Private roads shall have and maintain above-road clearance of at least fourteen (14) feet to ensure a safe and unimpeded route of travel for motor vehicle traffic, pedestrians, and emergency vehicles in all weather conditions.

9. **Private Road Maintenance Agreement Required.** An application for a private road shall be accompanied by a private road maintenance agreement, in recordable form, that meets the following minimum standards:

- a. The private easement and maintenance agreement shall require the property owner(s) served by the private road to be responsible for the ownership and maintenance of the private road.
- b. The agreement shall contain the method for apportioning costs of construction, maintenance and repair of the private road. The agreement shall also contain provisions for a performance guarantee, if required by the Planning Commission.
- c. The agreement shall contain a legal description of the private road.
- d. The agreement shall bind all of the benefitting lots and/or parcels and owners thereof and all succeeding owners of benefitted lots or parcels to its terms.
- e. The agreement shall contain a clause stating that the applicants and owners shall indemnify and hold harmless the township and its planning commission for all claims of personal injury, and/or property damage arising out of the construction and use of the private road or of the failure to properly construct, maintain, use repair and replace the private road.
- f. The agreement shall contain a provision permitting the Township Board to authorize the repair of any private road that is not being adequately maintained to permit Safe and Unimpeded Route of Travel by users and emergency vehicles, and to assess the costs of such repair, including the costs of engineering and administration, to the benefitted owners of the Agreement on an equitable basis as a special assessment. The Township Board has sole discretion to determine whether to authorize repair or maintenance of a private road.
- g. The agreement shall be reviewed and approved by the Planning Commission as part of the special use approval. The agreement may

be referred to the Township's Attorney for review and approval at the applicant's expense.

10. **Private Road Application Process and Requirements.** An application for a private road shall include the following, unless waived by the Planning Commission:
 - a. A completed application form, provided by the Township, along with any fees and escrow established for review.
 - b. The required private road easement and maintenance agreement.
 - c. A detailed written description of the development/parcels and/or lots to be served by the private road.
 - d. Road construction plans drawn by an engineer registered in the State of Michigan.
 - e. A survey of the right-of-way by a registered land surveyor.
 - f. The location of all proposed public utilities to be located within the private road right-of-way and copies of instruments granting such easements thereto.
 - g. The location of any lakes, streams, wetlands and drains within the proposed right-of-way or within one hundred (100) feet thereof.
 - h. The location of any other buildings and structures located within line hundred (100) feet of the private road right-of-way.
 - i. An approved Soil Erosion and Sedimentation Control Permit.
 - j. The Planning Commission may require that the plans be reviewed and commented upon the St. Joseph County Drain Commissioner, the St. Joseph County Road Commission, the fire department or any other agency deemed affected by the proposed private road.
 - k. All private roads shall be named and the name shall be approved by the St. Joseph County Land Resources Department. Road identification signs meeting the requirements of the St. Joseph County Road Commission shall be shown to be installed at intersections.
11. No land division, subdivision or site condominium that creates lots or parcels accessed by a private road shall be approved or recorded unless and until a private road maintenance agreement conforming to the provisions of this Ordinance is approved.
12. No occupancy permit for a structure on a lot or parcel accessed by a private road, back lot access private drive, or shared driveway shall be approved until the requirements of this section are met.
13. **As built drawings.** After construction, the applicant, at its expense, shall provide the Township with a set of "as built" drawings bearing a certificate and statements from a registered design professional certifying that the private road has been completed in accordance with the special use approval.

14. **Maintenance.** Private roads shall be maintained in a manner such that they provide a safe and unimpeded route of travel for motor vehicle traffic, pedestrians and emergency vehicles in all weather conditions. Failure to provide a Safe and Unimpeded Method of Travel shall be deemed to be a violation of this Ordinance.

SECTION V
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 VI
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.

Carol Wilkins, Clerk
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