

ARTICLE IV: CITY ZONING BOARD OF APPEALS

SECTION 4.1 CREATION AND MEMBERSHIP

4.1.1. **ESTABLISHMENT**: There is hereby established a City Zoning Board of Appeals in accordance with Act 207 of the Public Acts of Michigan of 1921, as amended. The Board of Appeals shall perform its duties and exercise its powers as provided by Section 5 of the said Act, as amended, and in such a way that the objectives of this Ordinance may be equitably achieved; that there shall be provided a means for competent interpretation and controlled flexibility in the application of this Ordinance; that the health, safety and welfare of the public be secured, and that substantial justice be secured.

4.1.2. **MEMBERSHIP, TERMS OF OFFICE**: The legislative body of the City may act as or appoint a Board of Appeals. In the event that the legislative body appoints, the Board of Appeals must consist of not less than five (5) members, each to be appointed for a term of three (3) years: provided, that appointments for the first year shall be for a period of one (1), two (2) and three (3) years respectively, so as nearly as may be to provide for the appointment of an equal number each year, depending on the number of members, thereafter each member to hold office for the full three (3) year period. One member of the Zoning Board of Appeals shall be a member of the Planning Commission who holds no other municipal office. Members of the Board of Appeals shall be removable by the City Council for nonfeasance, malfeasance and misfeasance of office.

4.1.3. **TRAINING FOR BOARD OF APPEALS MEMBERS**: It shall be the duty of the Zoning administrator to carefully review with each new member of the Board of Appeals the provisions of this Ordinance, most importantly the provisions of Article IV as they regard the duties, powers and scope of responsibility that each Board member will assume while a member of the Board of Appeals. Furthermore, once each year the Zoning Administrator may, at the Board's request, review with the entire Board of Appeals their duties, powers, scope of responsibilities and the procedures and policies set forth for the Board of Appeals in this Ordinance.

Section 4.2 ORGANIZATION AND PROCEDURES

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4.2.1. RULES OF PROCEDURE: The Board of Appeals shall adopt its own rules of procedure as may be necessary to conduct its meeting and carry out its function. The Board shall choose its own chairperson, and in his absence, an acting chairperson.

4.2.2. MEETINGS: Meetings shall be held at the call of the chairperson and at such times as the Board of Appeals may determine. All meetings by the Board shall be open to the public. The Board may declare any meeting, or part of any meeting, a study meeting to pursue matters of business without comment or interruption from the public in attendance.

4.2.3. RECORDS: Minutes shall be recorded of all proceedings which shall contain the evidence received, the findings of fact and data relevant to every case considered, together with the votes of the members and the final disposition of each case. Such minutes shall be filed in the office of the City Clerk and shall be made available to the general public.

The City Clerk shall act as Secretary to the Board of Appeals and all records of the Board's action shall be taken and recorded under the (City Clerk's) direction.

4.2.4. COUNSEL: The City Attorney shall act as legal counsel for the Board and shall be present at all meetings upon request by the Board.

4.2.5. HEARINGS: The Board of Appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to all persons to whom any real property within three hundred (300) feet of the premises in question shall be assessed, such notice to be delivered personally or by mail addressed to the respective owners at the address given in the last assessment roll and shall decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make such an order, requirement decision or determination as in its opinion ought to be made in the premises and to that end shall have all powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance, the Board of Appeals may in passing upon appeals vary or modify any of its rules, regulations, or provisions relating to the construction, or structural changes in equipment, or alteration of

buildings or structures, or the use of land, buildings, or structures, or the use of land, buildings, or structures, so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done. The Board may recess such hearing from time to time, and, if the time and place of the continued hearing is publically announced at the time of adjournment of the Board hearing, no further notice shall be required.

Notice and Failure to Appear

Any person required to be given notice under the provisions of subsection 4.25, shall be a proper and necessary party to any action for review instituted under the provisions of this Ordinance and shall be given due notice personally or by registered or certified mail of any such proceedings in the same manner as provided in subsection 4.2.5. If any person receiving notice under the provisions of this section fails within 20 days of receiving such notice to enter an appearance in the court in which the proceedings were instituted, no further notice to such person or subsequent proceedings is required and the court may thereupon proceed to determine the issues.

4.2.6. DECISIONS: The Board of Appeals shall return a decision on a case within sixty (60) days after a request or appeal has been filed, unless a further time is agreed upon with the parties concerned. Any decision of the Board shall not become final until expiration thereof five (5) days from the date of entry such order, unless the Board shall find the immediate effect of such order is necessary for the preservation of property or personal rights and shall so certify on the record.

4.2.7. TWO-THIRDS VOTE: The concurring vote of two-thirds (2/3) members of the Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which they are required to pass under this Ordinance or to effect the variation in this Ordinance.

4.2.8. REPORTS TO COUCIL: At intervals of not greater than one year, the Board of Appeals shall, by written report to the City Council, list all applications and appeals made to it since its last report, and shall summarize its decisions on such applications and appeals.

SECTION 4.3 APPEALS

4.3.1. FILING OF APPEALS: Appeals to the Board of Appeals may be made by any person aggrieved, or by any officer, department, board or bureau of the City. Any appeal from the ruling of the Zoning Administrator concerning the enforcement of the provisions of this Ordinance shall be made to the Board of Appeals within ten (10) days after the date of the mailing of the Zoning Administrator's decision. Such appeal shall be filed with the Secretary of the Board of Appeals and with the Zoning Administrator, and shall specify the grounds for the appeal. The Zoning Administrator shall immediately transmit to the Secretary of the Board all papers constituting the record upon which the action appealed from was taken.

4.3.2. STAY: An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Appeals after notice of appeal has been filed with him that by reason of facts stated in the certificate a stay would, in the Administrator's opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board of Appeals, or, on application, by court of record.

4.4.3. FEES: A fee, as established by the City Council, shall be paid to the Secretary of the Board of Appeals at the time the petitioner files an application with the Board. The purpose of such fee is to cover, in part, the necessary advertisements, investigations, hearing records and other expenses incurred by the Board in connection with the appeal. No fee shall be charged if the city or any official body of the city is the moving party.

4.3.4. REVIEW BY CIRCUIT COURT: Any party aggrieved by any order, determination or decision of any officer, agency, board, commission, Board of appeals or the legislative body of the City of Olivet which has acted pursuant to the provisions of Act 207 of the Michigan Public Acts of 1921 as amended and Act 285 of the Michigan Public Acts 1931 as amended may obtain a review thereof both on the facts and the law, in the Circuit Court of Eaton County: Provided, that application is made to the Court within thirty days after delivery of certiorari or by any other method permissible under the rules and practices of the Circuit Courts of this state; and further provided, that all other means of local appeal and review as provided in this Ordinance have first been exhausted. The Circuit Court

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shall review the record and decision of the Board of Appeals to insure that the decision:

- a.) Complies with the constitution and laws of the State.
- b.) Is based upon proper procedure
- c.) Is supported by competent, material, and substantial evidence on the record.
- d.) Represents the reasonable exercise of discretion granted by the Board of Appeals.

If the Circuit Court finds the record of the Board of Appeals inadequate to make the review required by this section, or that there is additional evidence which is material and with good reason was not presented to the Board of Appeals on conditions which the court considers proper. The Board of Appeals may modify its findings and decision as a result of the new proceedings, or may affirm its original decision. The supplementary record and decision shall be filed with the courts. As a result of this review the Circuit Court may affirm, reverse, or modify the decision of the Board of Appeals.

4.3.5. APPEALS TO SUPREME COURT: Any appeal may be had from the decision of any circuit court or condemnation court to the supreme court in the same manner as provided by the laws of this state with respect to appeals from circuit court; and in the event of such appeal, the issue of nonconformity may be reviewed as an issue of law in the supreme court.

SECTION 4.4 DUTIES AND POWERS

The City Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms or intent of this Ordinance, but does have power to act on those matters where this Ordinance provides for an administrative review, interpretation, variance, exception, or special approval permit as defined in this Section.

4.4.1. REVIEW: The Board shall hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Zoning Administrator or by any other official in administering or enforcing any provisions of this Ordinance.

4.4.2. INTERPRETATION: The Board shall have the power to:

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- 1.) Interpret, upon request, the provisions of this Ordinance in such a way as to carry out the intent and purpose of this Ordinance.
- 2.) Determine the precise location of the boundary lines between zoning districts.
- 3.) Classify a use which is not specifically mentioned as part of the use regulations of any zoning district so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district.
- 4.) Determine the off-street parking and loading space requirements of any use not specifically mentioned in Article VII, Section 7.1 or 7.2.

4.4.3. VARIANCES: The Board shall have the power to authorize, upon appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, PROVIDED ALL of the BASIC conditions listed herein and any ONE of the SPECIAL conditions listed thereafter can be satisfied.

- 1.) BASIC CONDITIONS: That any variance granted from this Ordinance:
 - a.) Will not be contrary to the public interest or to the intent and purpose of this Ordinance.
 - b.) Shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a conditional use permit or a temporary use permit is required.
 - c.) Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.
 - d.) Is not one where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.
 - e.) Will relate only to property that is under control of the applicant.

- 2.) SPECIAL CONDITIONS: When ALL of the foregoing basic conditions can be satisfied, a variance may be granted when any ONE of the following special conditions can be clearly demonstrated.

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a.) Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

b.) Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.

c.) Where such variation is necessary for the preservation of a substantial property right possessed by the other properties in the same zoning district.

3.) RULES: The following rules shall be applied in the granting of variances:

a.) The Board may specify, in writing, such conditions regarding the character, location, and other features that will, in its judgement, secure the objectives and purposes of this Ordinance. The breach of any such condition shall automatically invalidate the permit granted.

b.) Each variance granted under the provisions of this Ordinance shall become null and void unless:

- The construction authorized by such variance or permit has been commenced within six (6) months after granting of the variance.

- The occupancy of land, premises, or buildings authorized by the variance has taken place within one (1) year after the granting of the variance.

c.) No application for a variance which has been denied wholly or in part by the Board shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly-discovered evidence or proof of changed conditions found upon inspection by the Board to be valid.

4.4.4. SPECIAL EXCEPTIONS: When, in its judgement, the public welfare will be served and the use of neighboring property will not be injured thereby, the Board may, in a specific case, after due notice and public hearing and subject to appropriate conditions and safeguards, determine and vary the application of the regulations of this Ordinance in harmony with the general character of the district and the intent and

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purposes of this Ordinance. The granting of a special exception shall in no way constitute a change in the basic uses permitted in the district affected nor on the property wherein the exception is permitted. The Board may issue either temporary or conditional permits as special exceptions for the following land and structure uses:

1.) TEMPORARY PERMITS: For temporary structures for dwelling purposes, including trailer coaches, subject to the following procedures and limitations:

a.) An application for a permit for the erection or movement of a temporary structure for dwelling purposes, including trailer coaches, shall be made to the Board on a special form used exclusively for that purpose.

b.) The Board shall give due notice to the applicant and to all property owners within three hundred (300) feet of the property affected at least five (5) days before the hearing will be held on such application.

c.) A temporary permit shall not be granted unless the Board finds adequate evidence that the proposed location of use will not be detrimental to property in immediate vicinity; and that the proposed water supply and sanitary facilities have been approved by the County Health Department.

d.) The Board may impose any reasonable conditions, including setbacks, land coverage, off-street parking, landscaping, and other requirements deemed necessary to protect adjoining properties and the public welfare. The violation of any such condition shall automatically invalidate the permit.

e.) The permit issued shall clearly set forth the conditions under which the permit is granted and shall state that the proposed temporary dwelling structure is to be vacated upon expiration of a specific time limit not to exceed six (6) months. No permit shall be transferable to any other owner or occupant.

2.) CONDITONAL PERMITS: When conditions exist that are unique to a particular situation, a conditional permit may be issue with specific limitations imposed by the Board. The land or structure may be permitted to be established and to continue in use as long as the conditions unique to the use exist. The permit issued shall contain all the specified conditions under which continued use may be allowed. Conditional permits may be issued for the following uses:

a.) Permit more than two (2) roomers in any one (1) dwelling, but not more than four (4), when it can be demonstrated to the

satisfaction of the Board that such an expanded capacity is a clear necessity for satisfaction of this particular housing demand; that adequate off-street parking space can be provided in accordance with standards stated in Article VII, Section 7.1; and that such use will not injure the character or value of the immediate neighborhood.

b.) The Board may authorize a reduction, modification, or waiver of any of the off-street parking or off-street loading regulations in Article VII, Section 7.1 and 7.2, when it can be demonstrated that circumstances of extreme practical difficulty exist that would unquestionably result in hardship to the applicant when a literal interpretation of the regulations is required. Hardship shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land. A hardship that is a result of any action of the applicant shall not be considered by the Board. Under all these circumstances, in no case shall the off-street parking or off-street loading standards be reduced by more than twenty-five percent (25%).

c.) Joint use of off-street parking areas may be authorized by the Board when the capacities outlined in Article VII, Section 7.1 are complied with and when a copy of an agreement between joint users shall be filed with the application for a building permit and is recorded with the Register of Deeds of Eaton County, guaranteeing continued use of the parking facilities for each party.

4.4.5. SPECIAL USE PERMIT: The Board of Appeals shall review any appeal properly filed with it where a special use permit application, as defined in Article VIII, Section 8.1.2, has been denied by the City Council. In which case the Board, has the power to approve or deny the issuance of a special use permit or it can authorize approval and vary the conditions of that approval as long as the conditions remain consistent with the standards described in Article VIII and are consistent with the intent and provisions of this Ordinance. In making their determination, the Board of Appeals shall examine the application and all accompanying data as well as the records and determination of both the Planning Commission hearing and the City Council deliberations; furthermore, the Board shall make any additional investigations it deems necessary before rendering a decision.

SECTION 4.5 ESSENTIAL SERVICES

The Board of Appeals shall have the power to permit the erection and use of a building, or an addition to an existing building, of a public service

corporation or for public utility purposes, in any permitted district to a greater height or of larger area than the district requirements herein established, and permit the location in any use district of a public utility building, structure, or use if the Board shall find such use, height, area, building, or structure reasonably necessary for the public convenience and service.

SECTION 4.6 BOND FOR COMPLIANCE

4.6.1. BOND AUTHORIZED: In authorizing any variance, or in granting any conditional, temporary or special approval permits, the City Board of Appeals may require that a cash deposit, certified check, irrevocable bank letter of credit, or surety bond acceptable to the City of Olivet covering the estimated cost of improvements associated with a project for which zoning approval is sought, be deposited with the City of Olivet Clerk to insure faithful completion of the improvements. The performance guarantee shall be deposited at the time of the issuance of the permit authorizing the activity or project. The City Board of Appeals may not require the deposit of performance guarantee before the date on which the permit is to be issued. The City Board of Appeals shall establish procedures under which a rebate of any cash deposits in reasonable proportions to the ratio of work completed on the required improvements will be made as work progresses.