

**MINUTES  
REGULAR MEETING OF THE OWOSSO ZONING BOARD OF APPEALS  
CITY OF OWOSSO  
JANUARY 18, 2011**

The meeting was called to order by Chairman Randy Horton at 9:33 a.m.

Roll call was taken by City Clerk, Amy K. Kirkland.

**MEMBERS PRESENT:** Daniel Jozwiak, Kent Telesz, Chairperson Randy Horton, and Alternate Matthew Grubb.

**MEMBERS ABSENT:** Christopher Eveleth and Vice-Chairperson Elizabeth Frasier (alternate & excused).

**OTHERS PRESENT:** Mark Hanna.

**AGENDA:** It was moved by Board Member Telesz and supported by Board Member Grubb to approve the agenda as presented.

**AYES:** All. Motion carried.

**NAYS:** None.

**MINUTES:** It was moved by Board Member Jozwiak and supported by Board Member Grubb to approve the minutes of the meeting of June 15, 2010.

**AYES:** All. Motion carried.

**NAYS:** None.

**ELECTION OF OFFICERS:**

**Chairperson:**

Board Member Telesz nominated Board Member Horton for Chairperson.

There were no other nominations.

**The Owosso Zoning Board of Appeals hereby selects Board Member Horton to serve as the Chairman of the ZBA for the remainder of the current term, set to end on June 30, 2011.**

**AYES:** All. Motion carried.

**NAYS:** None.

**Vice Chairperson:**

Board Member Jozwiak nominated Board Member Eveleth as Vice Chairperson.

There were no other nominations.

**The Owosso Zoning Board of Appeals hereby selects Board Member Eveleth to serve as the Vice Chairman of the ZBA for the remainder of the current term, set to end on June 30, 2011.**

**AYES:** All. Motion carried.

**NAYS:** None.

**Secretary:**

Board Member Telesz nominated Board Member Jozwiak for Secretary.

There were no other nominations.

**The Owosso Zoning Board of Appeals hereby selects Board Member Jozwiak to serve as the Secretary of the ZBA for the remainder of the current term, set to end on June 30, 2011.**

**AYES: 3. Motion carried.**  
**NAYS: 1.**

**COMMUNICATIONS:**

- |                                   |             |
|-----------------------------------|-------------|
| 1. Staff memorandum               | (Reference) |
| 2. ZBA minutes from June 15, 2010 | (Business)  |
| 3. Amended bylaws                 | (Business)  |

**COMMISSIONER/PUBLIC COMMENTS:**

None.

**PUBLIC HEARINGS:**

None Requested.

**BUSINESS ITEMS:**

**ZBA Bylaws:**

Assistant City Manager Adam Zettel spoke briefly about how the rules were originally adopted as well as the changes that were made to incorporate the 2006 State law and changes in local law. He also noted the revised copy presented to the Board at the beginning of the meeting setting the quorum at three.

There was a brief discussion regarding the attendance requirement given the Board meets on a sporadic basis. It was agreed the attendance requirement would be adjusted to note that absence from 25% of the meetings held would constitute a forfeiture of appointment.

**Motion by Board Member Telesz, supported by Board Member Jozwiak to adopt the Zoning Board of Appeals Rules and Regulations and submit them to City Council for final approval as follows:**

**CITY OF OWOSSO  
ZONING BOARD OF APPEALS  
RULES OF PROCEDURE**

**SECTION 1.0 PURPOSE**

The following rules of procedure are hereby adopted by the City of Owosso Zoning Board of Appeals (hereinafter known as Appeals Board) to facilitate the performance of its duties as outlined in the City of Owosso Zoning Ordinance, Chapter 38 of the Owosso City Code and Act No. 110 of the Public Acts of Michigan of 2006 (MCL 125.3101 et seq., as amended. For simplicity of presentation the words Chairman, Vice-Chairman or his shall be representative of either gender.

**SECTION 2.0 OFFICERS**

2.1 Selection. At the regular meeting in July of each year, the Appeals Board shall select from its membership a Chairman, Vice-chairman and Secretary. All officers are eligible for reelection.

2.2 Tenure. The Chairman, Vice-Chairman and Secretary shall take office the same meeting of their selection and shall hold office for a term of one year or until their successors are selected and assume office.

2.3 Duties. The Chairman shall preside at all meetings, and perform such other duties as may be

ordered by the Appeals Board.

2.4 Duties. The Vice-Chairman shall act in the capacity of Chairman in his absence and in the event the office of the Chairman becomes vacant, the Vice-Chairman shall succeed to this office for the unexpired term. The Appeals Board shall select a successor to the office of Vice-chairman for the unexpired term. The Vice-chairman shall perform such other duties as the Appeals Board may determine.

2.5 Duties. The Secretary shall record the official proceedings of the meetings and conduct all correspondence as may be directed by the Appeals Board. The proceedings of each meeting shall be reviewed at the following meeting of the Appeals Board and be affirmed as a correct representation of the proceedings or amended upon approval by a majority of the Appeals Board members.

### **SECTION 3.0 NOTICE OF APPEAL**

3.1 Filing. Any interested person, or the person's authorized agent, may appeal or seek a variance in writing on a form provided by the zoning administrator, and upon payment of a fee as may be established from time to time by the governing body. Such notice of appeal shall be filed with the zoning administrator not more than 30 days from the date of the decision being appealed. Such request for a variance or appeal of decision may be filed with the zoning administrator at any time.

3.2 Notification. Within 10 days from the date of the receipt of the request for a variance, interpretation, notice of appeal or other business item, the zoning administrator shall contact the Chairman of the ZBA and establish a date and time for the board to hold a hearing and a meeting to consider and act on the case. Notice of such meeting shall be made by the zoning administrator as specified in Section 4.3 of these rules of procedure. The notice sent to members of the Appeals Board shall include copies of the notice of appeals or request for a variance form; the entire content of the zoning administrators file, and/or other file(s) on the case; other relevant correspondence, permits by other applicable enforcement agencies; and anything else which is relevant. In addition to the above notice requirements, notice of such meeting shall be delivered in person or by first class mail to the landowner, adjacent landowners and occupants within 300 feet of the appellant's property, and a notice sent by first class mail to the person and/or agent seeking the appeal or variance. The notice shall be delivered not less than fifteen (15) days prior to the public hearing. The content of such notice shall contain all information required by PA 110 of 2006, as amended.

3.3 Deadline for Action. The above notwithstanding, the Appeals Board shall hear the case and render and file its decision with a statement of reasons for the decision with the zoning administrator not more than 45 days after receipt of the case, unless a longer period of time is mutually agreed upon by the petitioner and the ZBA.

3.4 Site Inspection. The Appeals Board, if the chairman considers it necessary, may conduct a site inspection of the site at issue. In such instance, the site inspection shall be posted as part of the public meeting/hearing. A quorum of the Appeals Board shall not ride in the same vehicle to or from a site inspection or to or from a meeting. The site inspection, if posted as part of the meeting/hearing shall always be held the same day and as part of the same meeting as the start of the public hearing on the case. Nothing in this paragraph shall prevent members of the Appeals Board from individually and separately visiting a site in question at their own expense and time. A quorum of the Appeals Board shall not make site inspections or otherwise discuss a notice of appeal except during posted open meetings of the Appeals Board.

3.5 Notice of Decision. The Secretary, or his designate, shall cause to have timely notices of the Appeals Board decision delivered in person or by first class mail to the zoning administrator, to the governing body's attorney's office, the petitioner or his agent, and to anyone else requesting a copy in writing.

### **SECTION 4.0 MEETINGS**

4.1 Regular Meetings. The Appeals Board shall meet at least once each year during the month of July. Any other meetings of the Appeals Board shall be called as needed in response to receipt of a

Notice of Appeal, so long as the meeting is scheduled within 20 days of the notice of appeal. The meeting can be called by the zoning administrator of the City of Owosso, the Chairman of the Appeals Board, or, in his absence, the Vice-Chairman. The regular meetings of the Appeals Board shall take place at 9:30 a.m. on the third Tuesday of the month in the City Council Chambers, City Hall, 301 W. Main St., Owosso, Michigan.

4.2 Attendance/Performance. If any member of the Appeals Board accumulates unexcused absences for more than two meetings in a row, or more than 25% of the meetings held in a rolling 24 month period, then that member shall be considered delinquent. Delinquency shall not be established when the absent Board member has given notice to the Board at least five days in advance of their absence. The Appeals Board shall make a finding of the delinquent member's reason for absence, commitment to future performance, and impact on the Appeal Board's ability to conduct business for the public. These findings, after public discussion of the delinquency determines neglect of duty, shall be forwarded by the Secretary to the Mayor for further action which may include removal from office in accordance with the Michigan Zoning Enabling Act of 2006 as amended.

When a petitioner fails to appear at a properly scheduled meeting of the Board of Appeals, the Chairman may entertain a motion from the Board to dismiss the case for want of prosecution. In the absence of a motion by the Appeals Board, the chair shall rule. In cases which are dismissed for want of prosecution, the petitioner will be furnished written notice of the action by the Secretary of the Appeals Board. The applicant shall have seven (7) days from the date of notice of dismissal to apply for reinstatement of the case. In such cases, applicant must file a written request with the Secretary for reinstatement. Reinstatement shall be at the discretion of the Chairman for good cause shown, and upon payment of a fee set from time to time by the governing body. In all cases reinstated in the above described manner, the case will be docketed and re-advertised in the usual manner prescribed for new cases.

4.3 Other Meetings. Meetings shall be called by delivering meeting notices by first class mail, electronic mail, or by personal delivery to members of the board at least five days prior to such meeting and shall state the purpose, time, location of the meeting and shall be posted at City Hall ten days prior to such meeting.

4.4 Public. All meetings, hearings, records and accounts shall be open to the public, and posted in compliance with P.A. 267 of 1976, the Michigan Open Meetings Act.

4.5 Quorum. The presence of three members shall be necessary to constitute a quorum. A majority vote of the members shall be required to pass on business matters. For any matter under which the Appeals Board is required to pass under the provisions of the Owosso City Code, a two-thirds majority vote of the full board shall be necessary.

4.6 Order of Business. Agenda. The Secretary or his designate shall prepare an agenda for each meeting and the order of business therein shall be as follows:

- A. Call to order roll call and approval of agenda.
- B. Approval of minutes from previous meeting.
- C. Site inspection, then recess (optional, if the meeting is posted to include a site inspection).
- D. Reconvene and roll call (if following a site inspection).
- E. Election of officers, if necessary.
- F. Public Hearings. The Chairman will declare a public hearing open and state its purpose.
  - 1) The Chairman shall summarize, provide copies, or conspicuously post the procedure for public hearing as outlined in Sections 4.6, 4.7, 4.8 and 4.9 of these rules of procedure for any members of the public in attendance.
  - 2) Case number (numbered by year/sequence)
    - (i) The zoning administrator presents the petitioner's request, his action on the latter and reasons for his decision plus a written copy of his request.

- (ii) The petitioner, through himself, his agent, or his lawyer may present his case, including presenting witnesses on his behalf. No time limit will be imposed on the petitioner.
- (iii) Members of the Appeals Board shall report on their site Inspection and any conversations with the petitioner they may have had.
- (iv) Members of the public speak and correspondence is read.
  - a. The Chairman may recess the meeting for a short time to allow attending groups to caucus in order to have one individual speak on their behalf for an unlimited period of time if there are a large number of people present on an issue.
  - b. The Chairman shall allow the rest of the public to speak in response to the matter and may impose a time limit for the each speaker.
- (v) Rebuttal. Anyone may ask the Chairman questions on presentations or speeches given at this hearing. The Chairman will seek an answer to the question. Answers shall be given to the Chairman. There shall be no discussion, questioning or answering people except between the Chairman and the Individual who has the floor.
- (vi) Close the Public Hearing. (At this point all public participation on the issue ends).
- (vii) Members of the Appeals Board may question or request clarification with any interested party on any matter related to the case.

- G. Recess to another day as provided in Section 4.8 of these rules of procedure,
- H. Business Session.

- 1) Action on pending case number \_\_\_\_\_ .
  - (i) Discussion: Review of facts based on all Information presented (from the application, written request for appeal, zoning ordinance, physical characteristics of the parcels, staff reports, and hearing testimony). Discussion continues until a member proposes a motion that includes a "finding of fact" with those conclusions that are reached and conditions to be applied, if any.
  - (ii). A motion is proposed on "finding of fact."
  - (iii) Discussion on the Motion.
  - (iv) Action on the motion.
- 2) Other business of the Appeals Board.

- I. Public/Commissioner Comments
- J. Adjournment

4.7 Comments Out of Order. The Chairman shall rule out of order any irrelevant remarks; remarks which are personal, about another's race, religion, sex, physical condition, ethnic background, beliefs, or similar topics; profanity; or any other remarks which are not about land use.

4.8 Recesses. The Chairman may recess a public hearing and/or meeting to another time if it is after 12 noon or if the meeting (not including site inspections) has been over three hours. In order for a recess to be in order, the time, day, month, date, year and location to reconvene shall be stated as part of the action to recess. If a meeting and /or public hearing reconvenes over 36 hours after the action to recess, the reconvened meeting shall be posted at least 18 hours before the time of the reconvened meeting, to comply with Section 4.4 of these rules of procedure. Upon reconvening, a roll call shall be taken as the first order of business.

4.9 Parliamentary Procedure. Meetings shall be conducted in a formal manner, and parliamentary procedure shall be governed by Roberts Rules of Order if not specifically dealt with in these rules of procedure.

4.10 Motions. Motions shall be reiterated by the Chairman before a vote is taken.

- A. Motions dealing with an appeal or a variance concerning the City of Owosso Zoning Ordinance shall be stated with the following parts or stated as two motions:
- 1) The list of facts which is the information pertinent to making a decision on the matter, structured as a "finding of fact" on the case.
  - 2) The conclusion, decision, of the Appeals Board. This motion, or part of a motion, shall include the following parts:
    - (i) The rationale, reason, for why the conclusion was made. The rationale, reasons, shall contain, at a minimum:
      - a. If the property cannot be used in conformance with the ordinance without the requested or lesser variance.
      - b. If the problem is due to a unique situation not shared in common with nearby property owners.
      - c. If granting the variance would not alter the essential character of an area.
      - d. If the problem requiring a variance was not self-created.  
(NOTE): All four of the above points must be found true, or in the affirmative, or a variance shall not be granted.
      - e. Other specific standards for variances that are in the City of Owosso Zoning Ordinance.
      - f. An explanation how the facts support the conclusion.
    - (ii) The conclusion or decision.
    - (iii) Any conditions upon which a variance may be issued, if applicable. Conditions shall be listed in detail and based on regulations or standards already in the Owosso Zoning Ordinance.
    - (iv) Reasons why the conditions are imposed.
- B. Motions dealing with an ordinance interpretation, or any appeal of an administrative decision, shall be stated with the following parts, or stated as two motions.
- 1) The list of facts which is the information pertinent to making a decision on the matter.
  - 2) The conclusion or decision of the Appeals Board. This motion, or part of the motion, shall contain the following parts:
    - (i) The rationale, or reasons, to explain how the facts support the conclusion. (ii) The conclusion or decision.
- C. Any other motion shall be stated in a prose or in the form of a resolution.

4.11 Voting. Voting shall be by roll call vote, and shall be recorded by yeas and nays. Members must be present to cast a vote.

## **SECTION 5.0 RECORDS**

5.1 Preparation. A record of each meeting, including hearings and site inspections, shall be prepared by the Secretary, or his designate.

5.2 Content. The record of each meeting should include the following items:

- A. A copy of the meeting posting as required in Section 4.4 of these rules of procedure.
- B. A signed statement indicating that notices, as required in Section 3.2 of these rules of procedure, were sent out, with list of to whom, and an indication of by whom, and a copy of a newspaper notice, if one was published.
- C. A copy of the request for a variance or notice of appeal, whichever is applicable, including any maps, drawings, site plans, etc.
- D. The original of the minutes of the meeting (including the hearing and site inspection) which shall include, all action taken in chronological sequence of occurrence.
- E. The records of any action on a case by the zoning administrator.

- F. The records of all past records regarding the property involved in a case (previous permit, special use permit, variances, appeals).
- G. Any relevant maps, drawings, photographs, presented as evidence at a hearing.
- H. Copies of any correspondence received or sent out in regard to a case.
- I. A copy of relevant sections, or a list of citations of sections of the zoning ordinance.
- J. A copy of any follow-up correspondence to or from the petitioner regarding the decision.

5.3 Retention. The record of each meeting shall be permanently kept on file and spread in suitable volumes with a copy filed with the City Clerk. All the pertinent documents and minutes for each case before the Board of Appeals shall be copied and filed with the zoning administrator's office. Copies of the minutes shall be distributed to each member of the Appeals Board within ten days of the meeting. Copies of the minutes shall be available to the public no later than five days after a meeting.

#### **SECTION 6.0 OTHER DUTIES**

The Appeals Board may also formulate and provide advice and may advise policy to the planning commission or any committee thereof, on issues dealing with the administration, text, map and enforcement of the zoning ordinance.

#### **SECTION 7.0 CONFLICT OF INTEREST**

The members of the Appeals Board shall comply with Act No. 196 of the Public Acts of 1973, State of Michigan, as amended as it pertains to standards of conduct for public officers.

#### **SECTION 8.0 ADOPTION AND REPEAL**

Upon adoption of these rules of procedure of the Owosso Zoning Board of Appeals and the Owosso City Council, they shall become effective and all previous rules of procedure, as amended, shall be repealed.

#### **SECTION 9.0 AMENDMENTS**

These rules may be amended at any regular or special meeting by a majority vote of the total members of the Appeals Board, so long as such amendment does not result in a conflict with state law, zoning ordinance, or court decision.

**AYES: All. Motion carried.**

**NAYS: None.**

**ADJOURNMENT:**

**The meeting was adjourned at 9:56 a.m.**

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Dan Jozwiak, Secretary

a.k.k.