CITY OF BESSEMER
RESOLUTION # 2023-09

Zoning Board of Appeals Rules of Order

WHEREAS, The Zoning Board of Appeals (also known as the Board of Appeals) shall perform its duties and exercise its powers so that the health, safety and welfare of the public may be secured; and that substantial justice be done,

NOW, THEREFORE, BE IT RESOLVED, that the Rules of Order to be followed by the Bessemer Zoning Board of Appeals are as follows:

From the Zoning Ordinance, page 238.

Zoning Board of Appeals

1) **Provisions Pertaining to Membership**

(a) **Membership**

(i) The Board of Zoning Appeals for the City of Bessemer shall be composed of the five (5) elected members of the City Council as duly elected or appointed.

(ii) The Chair of the Planning Commission or designee shall serve as an alternate member of the Zoning Board of Appeals. The alternate member may take part in all deliberations of the Board, but shall not have a vote unless a regular member is unable to vote because of absence or a conflict of interest.

(iii) Within twelve (12) months after the start of an individual's first term of office and duty as a member of the Zoning Board of Appeals, members shall attend a training program on their roles and responsibilities.

(b) **Terms**

The term of the members of the Zoning Board of Appeals shall coincide with their elected term of office.

2) **Provisions Pertaining to Procedures**

(a) **Officers:** The Board of Appeals shall select a Chairman and Vice-Chairman from within their membership.

(b) **Alternate members:** An alternate member may be called to serve as a member of the Board of Appeals in the absence of a regular member if the regular member will be unable to attend one or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest. The alternate member

appointed shall serve in the case until a final decision is made. An alternate member serving on the Board of Appeals has the same voting rights as a regular member.

(c) **Attendance:** Since regular attendance is required for optimal function of the Board of Appeals, members of the Board are appointed subject to the following attendance criteria:

(i) Member(s) shall be expected to notify the chairperson or his/her designee of his/her expected absence prior to a meeting.

(ii) Member(s), unless excused by the chairperson, shall not be absent for more than two (2) consecutive meetings, irrespective of calendar year.

(iii) The Board of Appeals Secretary shall be responsible to report the noncompliance of attendance criteria of any Board of Appeals member to the Chairperson.

(iv) The Chairperson of the Board of Appeals shall notify the entire Board in writing of any non-compliance with attendance criteria, including recommended action.

(v) Under extenuating circumstances, such as a serious or chronic health condition, or family illness, the Board of Appeals may, by motion and majority vote, defer the action specified above. Said member is exempt from voting privileges in the action.

(d) **Meetings:** Meetings of the Board of Appeals shall be held at the call of the Chairperson and at other times as the Board in its rules of procedure may specify. There shall be a fixed place for each meeting, and all meetings shall be open to the public.

(e) **Voting:**

(i) All members of the Board of Appeals present at a meeting shall vote on every matter unless a member of the Board has a conflict of interest. A member of the Board of Appeals shall abstain from a vote in which the member has a conflict of interest, and the member shall state the nature of the conflict of interest prior to participating in a hearing on the matter.

(ii) The concurring vote of a majority of all the members of the Board of Appeals shall be necessary to reverse an order, requirement, decision or determination of the administrative official or body, or to decide in favor of the applicant on a matter upon which they are required to pass under the Zoning Ordinance, or to grant a variance in the Zoning Ordinance.

(f) A Zoning Board of Appeals shall not conduct business unless a majority of the regular members are present.

(g) A member of the Zoning Board of Appeals who is also a member of the Planning Commission shall not participate in a public hearing on or vote on the same matter that

the member voted on as a member of the Planning Commission. However, the member may consider and vote on other unrelated matters involving the same property.

(h) **Keeping of Records:**

(i) Minutes of all meetings shall be recorded and shall contain the grounds of every determination made by the Board of Appeals including all evidence and data considered, all findings of fact and conclusions drawn by the Board for every case together with the votes of the members and final disposition of each case. Such minutes shall be filed in the Office of the Zoning Administrator, and shall be available to the public. The written record of proceedings shall be contained in a file with the following information:

1. The application (for a permit, variance, interpretation, exception).

2. Any reports, plans, surveys, or photos.

3. Notice of Public Hearing to affected parties in newspaper.

4. Letter from Zoning Administrator granting or denying the application or referring it to the Board of Appeals and all other relevant records related to the case.

5. Affidavit of publication of Notice of Hearing.

6. Record of testimony heard and evidence presented.

7. A copy of the zoning Article(s) and Section(s) in question.

8. Briefs, correspondence or other communications made to or from the Board of Appeals, including any from the City Attorney or other attorneys.

9. Statement of facts found by Board of its knowledge regarding the

request including any information gained from personal inspection.

10. Decision of the Board as specifically related to the Findings of Fact. Said findings of fact shall include, but are not limited to the following information:

a. How the application of this Ordinance creates unnecessary hardship or practical difficulty in the use of petitioner's property.

b. Identify the unique physical circumstances or conditions or exceptional topography that create practical difficulties.

c. Specific findings (characteristics of the land) showing that because of physical circumstances or conditions there is no possibility that the property can be developed in strict conformity with the provisions of this Ordinance. That the authorization of a

variance is, therefore, necessary to enable the reasonable use of the property and that the condition is specific to this property and not general to other properties in the area.

d. Finding that the practical difficulty was not created by the appellant and is related only to property that is owned or occupied by the appellant.

e. A statement of the impacts of the variance if authorized, the property values, use and enjoyment of the property in the neighborhood or district, and on the public, health, safety and welfare.

f. The proposed variance does not permit the establishment of any use which is not permitted by right within the district or any use or dimensional variance for which a Special Land Use Permit is necessary.

g. Findings on whether the proposed development complies with the requirements, standards or procedures given in the Zoning Ordinance or an interpretation of the disputed Ordinance provisions, if applicable.

h. Findings on any error in judgment or procedure in the administration of the relevant zoning provisions.

i. The possible precedents or affects which might result from the approval or denial of the appeal.

j. Findings on the impact if the appeal is approved, on the ability of the City or other governmental agency to provide adequate public services and facilities and/or programs that might reasonably require in the future if the appeal is approved.

11. A copy of any other correspondence to the appellant regarding the request.

(ii) At its discretion, the Board of Appeals may file its decision relative to a particular property with the Register of Deeds to run as a permanent record with the property which was the subject of the decision by the Board of Appeals.

(i) **Removal from Office and Conflict of Interest**

(i) Members of the Board of Appeals shall be removable by the City Council for nonfeasance, including nonperformance of duty, or misfeasance, including misconduct in office, or for malfeasance upon written charges and after public hearing.

(ii) A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure to do so shall constitute malfeasance in office. A conflict of interest may include, but is not limited to considering property or adjoining property a Board of Appeals member owns or has a legal or financial interest in, or considering a request by a party with whom a Board member has close ties, such a family member, relative or close friend.

3) Scope of Powers

The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be made, and to that end, shall have all the powers of the office or body from whom theappeal was taken, but no more. The Board of Appeals may issue or direct the issuance of a permit if, following a review of the facts, the relevant Ordinance requirements, and the prior decision of the Zoning Administrator or Planning Commission, the Board of Appeals concludes the Ordinance requirements were not properly applied. The Board of Appeals shall have the power to make final determinations, within its jurisdiction and duties herein prescribed, in such a way that the objectives of this Ordinance may be equitably achieved in order that there shall be uniform interpretation and flexibility in the enforcement of this Ordinance or to fulfill any other responsibilities bestowed upon the Board of Appeals by this Ordinance. At the same time, the Board of Appeals shall be aware that this responsibility does not extend to creating regulations, only to applying regulations, which is a narrow quasi-judicial responsibility, and not a legislative one. The power to adopt land use regulations rests solely with the City Council. For example, the Board of Appeals shall not have the power to alter or change the zoning district classification of any property or to authorize any use of land not expressly permitted in the district, nor to make any change in the terms or intent of this Ordinance; these powers are reserved to the City Council.

4) Provisions Pertaining to Duties

The Zoning Board of Appeals shall perform the following duties:

(a) Adopt rules or procedure or Bylaws to govern its procedures on such matters as officers, voting, conduct of meetings, and related matters as it may consider necessary or advisable.

(b) Choose a Chairperson, and in his or her absence, an Acting Chairperson whomay administer oaths and compel the attendance of witnesses.

(c) Maintain a record of its proceedings which shall be filed in the office of the City Clerk.

(d) Hear and decide on matters referred to the Board of Appeals or upon which the Board of Appeals has been given authority under this Ordinance.

(e) Hear and decide appeals from and review any administrative order, requirement, decision, or determination made by the Zoning Administrator or Planning Commission in enforcing this Ordinance.

(f) Interpret, upon request, the provisions of this Ordinance in such a way as to carry out the intent and purpose of this Ordinance.

(g) The Board of Appeals shall have the power to make "Lot of Record" determinations in accordance with procedures detailed under the section "Specific Appeals Procedures".

(h) Review Site Plan Review appeals per procedures detailed in the section "Specific Appeals Procedures".

(i) The Board of Appeals shall have the power to permit the erection and use of a building, or an addition to an existing building, or a public service corporation for essential services, in any permitted district to a greater height or of larger or smaller 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. The Board of Appeals may also impose setbacks, specify the location or character of fences, buffering or landscaping requirements as a condition of approval pursuant to standards in this Ordinance as may be reasonably necessary to protect abutting property from the potential nuisance effects of such essential services.

(j) The Board of Appeals may retain legal counsel for any purpose deemed necessary provided that such appointment or retainer shall be approved in advance by the City Council.

F) Secretary

There shall be a Secretary on the Planning Commission and Zoning Board of Appeals for the purposes of preparing a public record of minutes, resolutions, transactions, findings and determinations. The Secretary may perform other duties related to the conduct of the Planning Commission or Board of Appeals business as may be required from time to time by the officers of the Planning Commission or Board of Appeals, provided the Secretary of the respective Commission and Board is solely responsible for the accuracy of such duties, and all documents prepared by the recording secretary shall be signed by the official secretary of the Planning Commission or official secretary of the Board of Appeals. The Secretary shall be a member of the Planning Commission or Zoning Board of Appeals unless the City Council authorizes funds to hire a recording secretary, if the task is not delegated to a City employee. The City Clerk shall maintain one official copy of a current Zoning Ordinance and Zoning District Map.

RESOLUTION DECLARED ADOPTED

Peter Tacconelli, Mayor
City of Bessemer, Michigan

CERTIFICATION

The foregoing is a true and complete copy of a Resolution adopted by the City Council of the City of Bessemer, County of Gogebic, State of Michigan, at a regular meeting held on the 25th of March, 2024 and public notice of said meeting was given pursuant to and in accordance with the requirements of Act No. 267 of the Public Acts of 1976, as amended, being the Open Meetings Act, and the Minutes of said meeting have been or will be made available as required by said Act.

Members Present: Zak, Tacconelli, Nelson, Serwe, Movrich

Members Absent: None.

It was moved by Nelson and supported by Zak to adopt the Resolution.

Members voting yes: Tacconelli, Movrich, Serwe, Zak, Nelson
Members voting no: None.

The Resolution was declared adopted by the Mayor and has been recorded in the Resolution Book.

Samantha Dorr, Deputy Clerk